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MITÁCSHARÁ,  
YÁVAHÁRA ADHYÁY,

TRANSLATED BY

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AND  
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A NEW AND IMPROVED EDITION

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## PREFACE TO THE NEW EDITION.

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SINCE the enactment of Act XI. of 1864 which abolished the offices of Hindu Law Officers, a complete work on Hindu Law Books has become indispensably necessary, for the administration of justice.

By Section 15, Regulation IV. 1793, re-enacted for Benares and the Upper Provinces by Regulation VIII. of 1795, § 3, and Regulation III. of 1803, § 16, it is provided, that in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Hindu law with regard to Hindus, is to be considered the general rules by which the Judges are to form their decisions.

In all other questions the Courts of Justice are required to guide themselves by the principles of justice, equity, and good conscience. Thus although in questions of Contract, Evidence, &c. a Court of Justice in the Mofussil is not bound to administer the original laws of the people of the country, yet in the adjudication of matters in which those laws have been laid down by the Legislature as binding, questions not unfrequently arise in which an examination of the provisions to be found in those systems of Jurisprudence on other subjects, viz. Contract, Evidence, &c. becomes essentially necessary for arriving at a sound and correct decision. By the Charter constituting the old Supreme Court, in cases of Contract arising between parties professing Hindu and Mahomedan faiths respectively, the Hindu and Mahomedan Laws on those subjects are enjoined to be administered, and the High Court in its original jurisdiction in those cases has still to decide in accordance with the provisions of those laws.

Although in 1810 Mr. H. T. Colebrooke published a translation of that portion of the *Mitácshará* which relates to the laws of Partition and Inheritance, and the portion relating to the Administration of Justice has been subsequently translated and published by Sir W. H. Macnaghten, yet the want of a complete *Mitácshará* is deeply felt by the legal profession. To supply this want partially, the Editor has undertaken the publication of this work, which contains the parts of the *Mitácshará* already translated by Messrs. Colebrooke and Macnaghten, and the Chapters on Loans, &c. which have been translated by the Editor himself. In both Mr. Colebrooke and Sir W. H. Macnaghten's translations, the original texts of *Yágyawalkya*, and the Commentaries of *Vijyánéshwara*, the author of the *Mitácshará*, are not distinguished. This causes great inconvenience. The plan followed in the Sanscrit Edition of the *Mitácshará* published in 1829 under the authority of the Committee of Public Instruction, distinguishing the original texts from the annotation of the Commentator by using different types, has been adopted in this edition. The original *Mitácshará* is not divided into Chapters and Sections. Mr. Colebrooke, for facility of reference and perspicuity of arrangement divided his work into Chapters and Sections according to the subjects. The same arrangement is also adopted in this edition, with the view that the old references used in several Hindu Law treatises might also be applicable.

The Editor believes that the present Edition of the *Mitácshará* with an Appendix containing a general Synopsis on Inheritance, the important Rulings of Her Majesty's Privy Council, and those of the Sudder and High Courts of the different Presidencies, and a Chart of the *Sapindas*, *Samánódacas*,\* and *Bundhoos*, who are entitled to succeed together with their order of succession, will be of material service to the Bench and Bar and the public in general.

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Should this work find favor with the public, it is in contemplation to translate and publish the other Chapters of the *Mitácshará*; so as to present to the Public the whole of this valuable treatise on Hindu jurisprudence in an English garb.

GIRISH CHANDRA TARKALANKAR.

CALCUTTA,  
*December*, 1870. }





# PREFACE BY COLEBROOKE

TO HIS EDITION OF THE

## DĀYA BHĀGA AND THE MITĀCŠHARĀ.

1810.

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No branch of jurisprudence is more important than the law of successions or inheritance ; as it constitutes that part of any national system of laws, which is the most peculiar and distinct, and which is of most frequent use and extensive application.

In the law of contracts, the rules of decision, observed in the jurisprudence of different countries, are in general dictated by reason and good sense ; and rise naturally, though not always obviously, from the plain maxims of equity and right.

As to the criminal law, mankind are in general agreed in regard to the nature of crimes : and, although some diversity necessarily result from the exigencies of different states of society, leading to considerable variation in the catalogue of offences, and in the scale of relative guilt and consequent punishment , yet the fundamental principles are unaltered, and may perhaps be equally traced in every known scheme of exemplary and retributive justice.

But the rules of succession to property, being in their nature arbitrary, are in all systems of law merely conventional. Admitting even that the succession of the offspring to the parent is so obvious as almost to present a natural and universal law ; yet this very first rule is so variously modified by the usages of different nations, that its application at least must be acknowledged to be founded on consent rather than on reasoning. In the laws of one people the rights of primogeniture are established ; in those of another the equal succession of all the male offspring prevails ; while the rest

allow the participation of the female with the male issue, some in equal, other in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour, with which they have viewed those opposite pretensions. Proceeding from linear to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules. Nor is it indeed practicable to reduce the rules of succession as actually established in any existing body of law, to a general or leading principle, unless by the assumption of some maxim not necessarily nor naturally connected with the canons of inheritance.

In proportion then, as the law of successions is arbitrary and irreducible to fixed and general principles, it is complex and intricate in its provisions ; and requires, on the part of those entrusted with the administration of justice, a previous preparation by study ; for its rules and maxims cannot be rightly understood, when only hastily consulted as occasions arise. Those occasions are of daily and of hourly occurrence : and, on this account, that branch of law should be carefully and diligently studied.

In the *Hindu* jurisprudence in particular, it is the branch of law, which specially and almost exclusively merits the attention of those who are qualifying themselves for the line of service in which it will become their duty to administer justice to our *Hindu* subjects, according to their own laws.

A very ample compilation on this subject is included in the Digest of *Hindu* law, prepared by *Jagannátha* under the directions of Sir *William Jones*. But copious as that work is, it does not supersede the necessity of further aid to the study of the *Hindu* law of inheritance. In the preface to the translation of the Digest, I hinted an opinion unfavourable to

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the arrangement of it, as it has been executed by the native compiler. I have been confirmed in that opinion of the compilation, since its publication; and indeed the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing in an intelligible manner which of them is the received doctrine of each school, but on the contrary leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered to be in force and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in *Indian* jurisprudence; especially to the *English* reader, for whose use, through the medium of translation, the work was particularly intended.

Entertaining this opinion of it, I long ago undertook a new compilation of the law of successions with other collections of *Hindu* law, under the sanction of the government of *Bengal*, for preparing for publication a supplementary Digest of such parts of the law as I might consider to be most useful. Its final completion and publication have been hitherto delayed by important avocations; and it has been judged mean time advisable to offer to the public in a detached form, a complete translation of two works materially connected with that compilation.

They are the standard authorities of the *Hindu* law of inheritance in the schools of *Benares* and *Bengal* respectively; and considerable advantage must be derived to the study of this branch of law, from access to those authentic works, in which the entire doctrine of each school, with the reasons and arguments by which it is supported, may be seen at one view and in a connected shape.

In general compilation, where the authorities are greatly multiplied, and the doctrines of many different schools, and of numerous authors are contrasted and compared, the reader is at a loss to collect the doctrines of a particular school and

to follow the train of reasoning by which they are maintained. He is confounded by the perpetual conflict of discordant opinions and jarring deductions; and by the frequent transition from the positions of one sect to the principles of another. It may be useful then, that such a compilation should be preceded by the separate publication of the most approved works of each school. By exhibiting in an exact translation the text of the author with notes selected from the glosses of his commentators or from the works of other writers of the same school, a correct knowledge of that part of the *Hindu* law, which is expressly treated by him, will be made more easily attainable, than by trusting solely to a general compilation. The one is best adapted to preparatory study; the other may afterwards be profitably consulted, when a general, but accurate knowledge has been thus previously obtained by the separate study of a complete body of doctrine.

These considerations determined the publication of the present volume. It comprehends the celebrated treatise of *Jīmūta-vāhana* on successions, which is constantly cited by the lawyers of *Bengal* under the emphatic title of *Dāya-bhāga* or “inheritance;” and an extract from the still more celebrated *Mitācsharā*, comprising so much of this work as relates to inheritance. The range of its authority and influence is far more extensive than that of *Jīmūta-vāhana*’s treatise; for it is received in all the schools of *Hindu* law, from *Benares* to the southern extremity of the peninsula of *India*, as the chief ground-work of the doctrines which they follow, and as an authority from which they rarely dissent.

The works of other eminent writers have, concurrently with the *Mitācsharā*, considerable weight in the schools of law which have respectively adopted them; as the *Smṛiti Chandricā*\*

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\* By *Draṇḍa Bhatta*. This excellent treatise on judicature is of great and almost paramount authority; as I am informed, in the countries occupied by the *Hindu* nations of *Drāvicira*, *Tailānga*, and *Carnātā*; inhabiting the greatest part of the peninsula or *Dekhin*.

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in the south of *India* ; the *Chintámani*, *Retnácara* and *Viváda-chandra*\* in *Mithilá* ; the *Viramitródaya* and *Camalácarat* at *Benares*, and the *Mayú'ha*† among the *Muráhattas* : but all agree in generally deferring to the authority of the *Mitácshará*, in frequently appealing to its text, and in rarely and at the same time modestly dissenting from its doctrines on particular questions. The *Bengal* school alone, having taken for its guide *Jímúta-váhana's* treatise, which is on almost every disputed point, opposite in doctrine to the *Mitácshará*, has no deference for its authority. On this account, independently of any other considerations, it would have been necessary to admit into the present volume either his treatise, or some one of the abridgments of his doctrine which are in use, and of which the best known and most approved is *Raghunandana's Dáya-tatva*. But the preference appeared to be decidedly due to the treatise of *Jímúta-váhana* himself ; as well because he was the founder of this school, being the author of the doctrine which it has adopted ; as because the subjects, which he discusses, are treated by him with eminent ability and great precision ; and for this further reason, that quotations from his work, or references to it, which must become necessary in a general compilation of the *Hindu* law of inheritance, can be but very imperfectly intelligible without the opportunity of consulting the whole text of his close reasoning and ample disquisitions.

Having selected, for reasons which have been here explained, the *Dáya-bhága* of *Jímúta-váhana* and the *Mitácshará* on inheritance, for translation and separate publication, I was

\* *Viváda Chintámani*, *Vyavahára Chintámani*, and other treatises of law by *Táchespati Misra*. *Viváda Retnácara*, *Vyavahára Retnacara* and other compilations by *Panditas* employed by *Chandésivara* ; *Viváda Chandra* by *Misra* *Misra* or rather by his aunt *Lac'hima* or *Lacshmi Devi*.

† *Viramitródaya*, an ample and very accurate digest by *Mitra Misra*. *Viváda-tándava* and other works of *Camalácará*.

‡ *Vyavahára Mayú'ha* and other treatises by *Nílacanti'ha*.

led in course to draw the chief part of the annotations necessary to the illustration of the text, from the commentaries on those works. Notes have been also taken from original treatises, of which likewise brief notices will be here given, that their authority may be appreciated.

In the selection of notes from commentaries and other sources, the choice of them has not been restricted to such as might be necessary to the elucidation of the subject as it is exhibited in the *English* version ; but variations in the reading and interpretation of the original text have been regularly noticed, with the view of adapting this translation to the use of those who may be induced to study it with the original *Sanscrit* text. The mere *English* reader will not be detained by these annotations, which he will of course pass by.

Having verified with great care the quotations of authors, as far as means are afforded to me by my own collection of *Sanscrit* law books (which includes, I believe, nearly all that are extant;) I have added at the foot of the page notes of reference to the places in which the texts are found. They will be satisfactory to the reader as demonstrating the general correctness of the original citations. The inaccuracies, which have been remarked, are also carefully noticed. They are few and not often important.

The sources, from which the annotations have been chiefly drawn, are the following :

The commentary of *Sricrishna Tereálancara* on the *Dáya-bhága* of *Jimúta-ráhana* has been chiefly and preferably used. This is the most celebrated of the glosses on the text. It is the work of a very acute logician, who interprets his author and reasons on his arguments, with great accuracy and precision ; and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout *Bengal* ; and it has almost banished from them the other expositions of the *Dáya-bhága* ; being

ranked, in general estimation, next after the treatises of *Jimûta-vâhana* and of *Raghunandana*.

An original treatise by the same author, entitled *Dâya-crama-sangraha*, contains a good compendium of the law of inheritance according to *Jimûta-vâhana's* text, as expounded in his commentary. It has been occasionally quoted in the notes : its authority being satisfactorily demonstrated by the use which was made of it in the compilation of the Digest translated by *Mr. Halhed* ; the compilers of which transcribed largely from it, though without acknowledgment.

The earliest commentary on *Jimûta-vâhana* is that of *Srinâlha Achârya Chûdâmani*. It has been constantly in *Sricrishna's* view, who frequently copies it ; but still oftener cites the opinions of *Chûdâmani* to correct or confute them. Notwithstanding this frequent collision of opinions, the commentary of *Chûdâmani* must be acknowledged as, in general, a very excellent exposition of the text, and it has been usefully consulted throughout the progress of the translation, as well as for the selection of explanatory notes.

Another commentary, anterior to *Sricrishna's*, but subsequent to *Chûdâmani's*, is that of *Achyuta Chacravarti*, (author likewise of a commentary on the *Srâulpha Tivêca*.) It is in many places quoted for refutation, and in more is closely followed by *Sricrishna*, but always without naming the author. It contains frequent citations from *Chûdâmani*, and is itself quoted with the name of the writer by *Mahésvara*. This work is upon the whole an able interpretation of the text of *Jimûta-vâhana*, and has afforded much assistance in the translation of it, and furnished many notes illustrating its sense.

The commentary of *Mahésvara* is posterior to those of *Chûdâmani* and of *Achyuta*, both of which are cited in it ; and is probably anterior to *Sricrishna's*, or at least nearly of the same date, if my information concerning these authors be



correct ;\* for they appear to have been almost contemporáry ; but *Mahésvara* seemingly a little the elder of the two. They differ greatly in their expositions of the text, both as to the meaning and as to the manner of deducing the sense : but neither of them affords any indication of his having seen the other's work. A comparison of these different and independent interpretations has been of material aid to a right understanding and correct version of obscure and doubtful passages in *Jimúta-ráhana's* text.

Of the remaining commentaries, of which notices had been obtained, only one other has been procured. It bears the name of *Raghunandana*, the author of the *Smṛiti-tatwa*, and the greatest authority of *Hindu* law in the province of *Bengal*. In proportion to the celebrity of the writer was the disappointment experienced on finding reason to distrust the authenticity of the work. But not being satisfied of its genuineness, and on the contrary suspecting it strongly of bearing a borrowed name, I have made a very sparing use of this commentary either in the version of the text or in the notes.

The *Dáya-tatwa*, or so much of the *Smṛiti-tatwa* as relates to inheritance, is the undoubted composition of *Raghunandana* ; and, in deference to the greatness of the author's name and the estimation in which his works are held among the learned *Hindus* of *Bengal*, has been throughout diligently consulted and carefully compared with *Jimúta-ráhana's* treatise, on which it is almost exclusively founded. It is indeed an excellent compendium of the law, in which not only *Jimúta-ráhana's* doctrines are in general strictly followed, but are commonly delivered in his own words in brief extracts from his text. On a few points, however, *Raghunandana* has dif-

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\* Great-grandsons of both these writers were living in 1806 : and the grandson (daughter's son) of *Sricrishna* was alive in 1790. Both consequently must have lived in the first part of the last century. They are modern writers ; and *Sricrishna* is apparently the most recent.

ferred from his master ; and in some instances he has supplied deficiencies. These, as far as they have appeared to be of importance, have furnished annotations ; for which his authority is of course quoted.

A commentary by *Cásiráma* on *Raghunandana's Dáyatatwa*, has also supplied a few annotations, and has been of some use in explaining *Jimúta-váhana's* commentators, being written in the spirit of their expositions of that author's text, particularly *Sricrishna's* gloss ; and often in the very words of that commentator.

The *Dáyarahasya* or *Smṛiti-ratnavali* of *Rámanátha Vidyá-Váchéspati*, having obtained a considerable degree of authority in some of the districts of *Bengal*, has been frequently consulted, and is sometimes quoted in the notes. It is a work not devoid of merit : but, as it differs in some material points from both *Jimúta-váhana* and *Raghunandana*, it tends too much to unhinge the certainty of the law on some important questions of very frequent recurrence. The same author has written a commentary on *Jimúta-váhana's Dáyabhága*, and makes a reference to it at the close of his own original treatise. My researches, however, and endeavours to procure a copy of it, have not been successful. I should else have considered it right to advert frequently to it in the illustrations of the text.

Other treatises on inheritance according to the doctrines received in *Bengal*, as the *Dáyá-nirnaya* of *Sricara Bhattachárya* and one or two more which have fallen under my inspection, are little else than epitomes of the work of *Raghunandana* or of *Jimúta-váhana* : and on this account have been scarcely at all used in preparing the present publication.

The remaining names, which occur in the notes, are of works or of their authors belonging to other schools. These are rarely, I may say never, cited, unless for variations in the reading of original texts of legislators ; excepting only the *Viramitródaya* of *Mitra Misra* ; from whose work a few

quotations may be found in the notes, contradicting passages of the text. This author, in the compilation mentioned, uniformly examines and refutes the peculiar doctrines maintained by *Jímúta-váhana* and *Raghnandana* : but it did not fall within the design of the present publication to exhibit the controversial arguments of the modern opponents of the *Bengal* school ; and quotations from his work have been therefore sparingly inserted in the notes to *Jímúta-váhana's* treatise.

The commentaries on the *Mitácshará* of *Vijayánésvara* are less numerous. Of four, concerning which I have notices, two only have been procured. The *Subód'hini* by *Viswésvara Bhatta* ; and a commentary by a modern author, *Bálam Bhatta*.

The *Subód'hini* is a collection of notes elucidating the obscure passages of the *Mitácshará*, concisely, but perspicuously. It leaves few difficulties unexplained, and dwells on them no further than is necessary to their elucidation. The commentator is author likewise of a compilation entitled *Madana Párijáta*, chiefly on religious law, but comprising a chapter on inheritance, a topic connected with that of obsequies. To this work he occasionally refers from his commentary. Both therefore have been continually consulted in the progress of the translation, and have furnished a great proportion of the annotations.

*Bálam Bhatta's* work is in the usual form of a perpetual comment. It proceeds, sentence by sentence, expounding every phrase, and every term, in the original text. Always copious on what is obscure and often so on what is clear, it has been a satisfactory aid in the translation, even where it was busy in explaining that which was evident : for it has been gratifying to find, though no doubts were entertained, that the intended interpretation had the sanction of a commentator. *Bálam Bhatta's* gloss in general follows the *Subód'hini* as far as this goes. It has supplied annotations where *Viswésvara's* commentary was silent ; or where the explana-

tion, couched in *Viśveśwara's* concise language, might be less intelligible to the *English* reader.

*Viṅyānēśwara's Mitācsharā* being a commentary on the institutes of *Yājñawalkya*, it has been a natural suggestion to compare his expositions of the law, and of his author's text in particular, with the commentaries of other writers on the same institutes, viz., the ancient and copious gloss of *Aparārca* of the royal house of *Silāra*, and the modern and succinct annotations of *Sūlapāni* in his comment entitled *Dīpācalicā*. A few notes have been selected from both these works, and chiefly from that of *Aparārca*.

For like reasons the commentators on the institutes of other ancient sages have been similarly examined; they are those of *Mēd'hātithi* and *Cullūca Bhatta* on *Menu*; *Hara-datta's* gloss on *Gautama*, which is entitled *Mitācsharā*; *Nanda-Pandita's* commentary under the title of *Vaijayanti*, on the institutes which bear the name of the god *Viṣṇu*; and those of the same author, and of *Mād'hava Achārya*, on *Parāśara*.

*Nanda-Pandita* is author also of an excellent treatise on adoption, entitled *Dattaca Mīmāṃsā*, of which much use has been made, among other authorities, in the enlarged illustrations which it has been judged advisable to add to the short chapter contained in the *Mitācsharā* on this important topic of *Hindu* law.

The same writer appears, from a reference in a passage of his gloss on *Viṣṇu*, to have composed a commentary on the *Mitācsharā* under the title of *Pratitācsharā*. Not having been able to procure that work, but concluding that the opinions, which the writer may have there delivered, correspond with those which he has expressed in his other compositions, I have made frequent references to the rest of his writings, and particularly to his commentary on *Viṣṇu*, which is a very excellent and copious work, and might serve, like the *Mitācsharā*, as a body or digest of law.

All the works of greatest authority in the several schools which hold the *Mitácshará* in veneration, have been occasionally made to contribute to the requisite elucidation of the text, or have been cited when necessary for such deviations from its doctrine, as it has been judged right to notice in the annotations. It will be sufficient to particularize in this place the *Viramitródaya* before-mentioned, of which the greatest use has been made; that compilation conforming generally to the doctrines of the *Mitácshará*, the words of which it very commonly cites with occasional elucidations of the text interspersed, or with express interpretations of it subjoined, or sometimes with the substitution of a paraphrase for parts of the original text. All these have been found useful auxiliaries to the professed commentaries and glosses.

This brief account of the works from which notes have been selected or aid derived, will sufficiently make known the plan on which the text of the *Mitácshará* and that of *Jámúta-váhana* have been translated and elucidated, and the materials which have been employed for that purpose. It is hardly necessary to add, by way of precaution to the reader, that he will find distinguished by hyphens, whatever has been inserted from the commentaries into the text to render it more easily intelligible; a reference to the particular commentary being always made in the notes at the foot of the page.

Concerning the history and age of the authors whose works are here introduced to the attention of the *English* reader, some information will be expected. On these points, however, the notices, which have been collected, are very imperfect, as must ever be the case in regard to the biography of *Hindu* authors.

*Vijnyánésvara*, often called *Vijnyána-yógi*, the author of the *Mitácshará*, is known to have been an ascetic, and belonged, as is affirmed, to an order of *Sannyásís*, said to have been founded by *Sancara Achúrya*. No further particulars concerning him have been preserved. A copy of his work has in-

leed been shown to me, in which, at its close, he is described as a contemporary of *Vicramāditya*. But the authority of this passage, which is wanting in other copies, is not sufficient to ground a belief of the antiquity of the book ; especially as it cannot be well reconciled to the received opinion above noticed of the author's appertaining to a religious order founded by *Sancara Acharya*, whose age cannot be carried further back at the utmost than a thousand years. The limit of the lowest recent date which can possibly be assigned to this work, may be more certainly fixed from the ascertained age of the commentary ; the author of which composed likewise (as already observed) the *Madana Párijáta* so named in honor of a prince called *Madana Pála*, apparently the same who gives title to the *Madana Vinóda*, dated in the fifteenth century of the *Sambat* era.\* It may be inferred as probable, that the antiquity of the *Mitácshará* exceeds 500 and is short of 1,000 years. If indeed *Dháréswara*, who is frequently cited in the *Mitácshará* as an author, be the same with the celebrated *Rája Bhója*, whose title may not improbably have been given to a work composed by his command, according to a practice which is by no means uncommon, the remoter limit will be reduced by more than a century ; and the range of uncertainty as to the age of the *Mitácshará* will be contracted within narrower bounds.

Of *Jímúta-váhana* as little is known. The name belongs to a prince of the house of *Silára*, of whose history some hints may be gathered from the fabulous adventures recorded of him in popular tales ; and who is mentioned in an ancient and authentic inscription found at *Salset*.† It was an obvious conjecture, that the name of this prince might have been affixed to a treatise of law composed perhaps under his patronage or by his directions. That however is not the

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\* 1431 *Sambat* ; answering to A. D. 1375.

† Asiatic Researches, Vol. I. p. 357.

opinion of the learned in *Bengal* ; who are more inclined to suppose, that the real author may have borne the name which is affixed to his work, and may have been a professed lawyer who performed the functions of judge and legal adviser to one of the most celebrated of the *Hindu* sovereigns of *Bengal*. No evidence, however, has been adduced in support of this opinion ; and the period when this author flourished is therefore entirely uncertain. He cites several earlier writers ; but, their age being not less doubtful than his own, no aid can be at present derived from that circumstance, towards the determination of the limits between which he is to be placed. His commentators suppose him in many places to be occupied in refuting the doctrines of the *Mitácshará*. Probably they are right ; it is however possible, that he may be there refuting the doctrines of earlier authors, which may have subsequently been repeated from them in the later compilation of *Vijnyánésvara*. Assuming, however, that the opinion of the commentators is correct ; the age of *Jímúta-ráhana* must be placed between that of *Vijnyánésvara*, whose doctrine he opposes, and that of *Raghunandana* who has followed his authority. Now *Raghunandana*'s date is ascertained at about three hundred years from this time ; for he was pupil of *Vásudéva Sárvabhauma*, and studied at the same time with three other disciples of the same preceptor, who likewise have acquired great celebrity ; viz., *Sirómani Críshnánanda*, and *Chaitanya* : the latter is the well known founder of the religious order and sect of *Vaishnavas* so numerous in the vicinity of *Calcutta*, and so notorious for the scandalous dissoluteness of their morals ; and, the date of his birth being held memorable by his followers, it is ascertained by his horoscope, said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the *Saca* era, answering to Y. C. 1489 : consequently *Raghunandana*, being his contemporary, must have flourished at the beginning of the sixteenth century.

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# MITÁCSHARÁ,

## A COMMENTARY BY VIJNYANESWARA ON THE INSTITUTES OF YAJNYAWALKYA.

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### ON THE ADMINISTRATION OF JUSTICE.

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#### CHAPTER I.

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##### SECTION I.

###### *Constitution of a Judicial Assembly.*

1. The protection of his subjects is the chief duty of a consecrated and otherwise qualified king, and this cannot be performed without restraining evil doers. But they cannot be discovered without legal investigation. Wherefore it is requisite, that daily attention should be paid to judicial proceedings, which gave rise to the text: "The king in person, being aided by assessors, should daily investigate judicial proceedings."\* But no explanation has yet been given of the nature, number, and forms of judicial proceedings. This second lecture is now commenced with a view of elucidating these points.

Judicial duty of  
a king.

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\* This refers to a former passage of *Yājñyavalkya* cited in the chapter treating of *Achar*.

What law to be followed,

I. "The king, divested of anger and avarice, and associated with learned Brahmins, should investigate judicial proceedings conformably to the sacred code of laws."\* (a)

General definition of a judicial proceeding.

2. *Judicial proceedings.*] The assumption of a fact in favour of one's self, to the exclusion of the interests of another. Thus, for example, one person asserts, "this field *or the like*, is my property," and another in opposition asserts, "It is mine."

Use of the plural number.

3. The plural number is used to show the multiplicity of judicial proceedings.

The duty is incumbent on all governors.

4. *The king.*] The use of this word demonstrates that the duty here enjoined is not confined to the military tribe, but extends to all those on whom the care of Government devolves.

Further explanation of the text.

5. *Investigate.*] The repetition of this word is used for the sake of enjoining the particular duty.—[*With learned.*] With those acquainted with the code of laws, the *Vedas*, the science of grammar, &c.†—[*Brahmins.*] Not persons of the military or other tribes.

Responsibility of the king.

6. Hence it follows, that the king, and not the Brahmins, is responsible for the neglect or perversion of justice; as *Menu* has said: "A king who inflicts punishment on such as deserve it not, and inflicts no punishment on such as deserve

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\* *Yājñyavalkya*, cited in the *Vyavahāramadhava*, *Smṛitichandricā*, *Vyavahāramayūcā*, *Smṛitichintāmani*, *Veeraṃitrodaya*, and *Vivādatandava*.

(a) I. R. and M. Let the monarch, free from anger or thought of gain, in conjunction with learned Brahmins, adjudicate law-suits, according to the *Dharma Sastras*.

† The use of the third, or causative case here denotes their inferiority: it being a rule of grammar, that the preposition should be connected with a secondary agent.

it, brings infamy on himself, while he lives, and shall sink, when he dies, to a region of torment.”\*

7. *Conformably to the sacred code of laws.*] Not according to ethical law. Local, temporal, and other ordinances which are not in opposition to the sacred code, are not separately treated of, as they do not form a different subject. Moreover, the following text may be here recited : “ A man should pay implicit obedience to any temporal regulation or legal enactment which may not militate against his peculiar duty”†

Explanation of what law to be followed.

8. *Divested of anger and avarice.*] Conformity to the sacred code having been already enjoined, this injunction seems to be superfluous; but it is used to show the paramount necessity of such conduct. “ *Anger*,” impatience of temper ; “ *avarice*,” excessive desire of gain. Moreover.

Of the terms anger and avarice.

II. “Persons who are versed in literature, acquainted with the law, addicted to truth, and impartial towards friend and foe, should be appointed assessors of the court by the king.”‡ (a)

Appointment of assessors.

9. *Persons who are versed in literature :*] that is, who are eminent in the study of philosophy, grammar, &c., and in comprehending the *Vedas*. “ *Acquainted with the law :*”

Explanation of the text.

\* *Menu*, 8, 128, cited in the *Dundavivaca*, *Veeramitrodaya*, *Vyavaharamadhava*, &c.

† *Yājñyavalkya*, cited in the *Dipacalica*, *Veeramitrodaya*, *Smritichintamani* and *Vyavaharamadhava*.

‡ *Yājñyavalkya*, cited in the *Commentary of Veeramitrodaya*, *Dipacalica*, *Vyavaharamadhava*, *Vivadarnavasetu*, *Vivadabhangarnava*, *Vivadatandava*, *Vyavaharamayūc'ha*, and *Smritichandrica*.

(a) II. R. and M. He shall appoint judges perfect in the *Vedas* and in science, versed in the *Dharma Sastras*, such as speak truth, and bear themselves alike to friend and foe.

familiar with the sacred code of laws. “*Addicted to truth:*” prone to habitual veracity. “*Impartial towards friend and foe:*” divested of enmity, affection, partiality, prejudice, and the like. Let persons with the qualities here described be seated in the assembly, as assessors (*Subhasuda*) induced by regal generosity, honours, and respect.

Should belong  
to the Brahmini-  
cal tribe,

10. Although the epithet “versed in literature” has here been used without restriction, yet it is intended to be confined to the Brahminical tribe, as *Catyáyana* has stated: “He (the king) should be associated with assessors, wise, experienced, eminent, of the highest tribe, familiar with the meaning of the sacred and moral codes.”\*

Number of the  
assessors.

11. These assessors are to be three in number, as the use of the plural requires; and this appears also to be the requisite number from the text of *Menu*: “In whatever country three Brahmins, particularly skilled in the several *Vedas*, preside, &c.”† But *Vrihaspati* has declared, that the number may be either three, five, or seven: “That assembly in which seven, five, or even three Brahmins versed in religious and worldly duties, preside, is equal to sacrificial ground.”‡

Assessors are  
distinct from the  
first mentioned  
Brahmins.

12. The epithet “versed in literature” must not be construed to apply to the Brahmins mentioned in the first text, because the epithet here used is in the first or nominative case, and cannot consequently consist with the term Brahmins mentioned in the former text, which appears in the third or causative case; besides which, there would be a repeated mention of the requisite quality of learning. *Catyá-*

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\* *Veeramitrodaya, Smritichandricá, Calpataru.*

† The remainder of the text is, “together with the learned Brahmin appointed by the king, the wise call that assembly a court judicature.” *Menu*, 8, 11, *Smritichandricá, Madhathithee, Veeramitrodaya.*

‡ *Vrihaspati*, cited in the *Smritichintamani, Vivadatandava, Vyavaháramayúcha, Vyavaháramádharma, Veeramitrodaya, Madhaviya, Culpataru, &c.*

*yana* has propounded an evident distinction between the Brahmins and assessors. "A king who investigates together with his chief judge, ministers, domestic priest, and assessors of the court, according to law, shall attain paradise."\*

13. The difference here is, that the Brahmins are not appointed, and the assessors are. Hence it has been ordained: "A person, whether appointed or not, is entitled to furnish legal advice."† It behoves those who are appointed officers to oppose a king proceeding illegally, after they have tendered true counsel: by acting otherwise they are culpable, as declared by *Catyáyana*: "Those assessors who follow a king pursuing the path of injustice, become participators in his act."‡ Hence it follows, that he should be remonstrated with by them.

Duty of assessors.

14. They, on the other hand, who are not appointed formally, become culpable by offering illegal advice, or withholding their counsel, but not by omitting opposition. This is conformable to the ordinance of *Menu*. "Either the court must not be entered [by judges, parties, and witnesses,] or law and truth must be openly declared: that man is criminal, who either says nothing, or says what is false and unjust."||

Duty of other counsellors.

15. From the conjunction "*and*," used in the text, (§§10,) it appears, that for the sake of adding popular confidence to the assembly, some persons of the commercial class should

A few men of the commercial class should be called in.

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\* *Veeramitrodaya*, *Vyavahāramayūc'ha*, *Smritichandricā*, *Smritichintāmani*, *Vyavahāramadhava*.

† Cited in the *Veeramitrodaya*, as the text of *Vasishtha*, but as the text of *Nāreda* in the *Vyavahāramayūc'ha* and *Smritichintāmani*.

‡ *Smritichintāmani*, *Vivadatandava*, *Vyavahāramadhava*.

|| *Menu*, 8, 13, cited in the *Smritichintāmani*, but as the text of *Catyáyana* in the *Vivadatandava*, *Dundaviveca*, and as the text of *Menu* and *Nāreda* in the *Smritisāra*, *Medhat'itheo*, *Callucabhatta*.



also be called in to assist, as *Catyáyana* says : " A few merchants should be summoned, men of good family and disposition, of a respectable age and good conduct, wealthy, and devoid of envy."\*

16. It has been stated, that the king should investigate judicial proceedings, but an alternative is propounded.

King may appoint a representative.

III. " A Brahmin acquainted with all duties should be appointed, and associated with the assessors, by a king who is unable through want of leisure to investigate judicial proceedings."† (a)

Text explained.

17. *A Brahmin* : [Not a man of the military or other tribes. — *Acquainted with all duties* :] One who knows and revolves in his mind all duties, whether of temporal origin or enjoined by law, is to be appointed, and associated with the assessors, by a king whose mind is engrossed with other affairs, for the purpose of investigating judicial proceedings.

Qualifications of the representative.

18. He should appoint a Brahmin endued with such qualities as *Catyáyana* has described in the following text : " Subdued, of a respectable family, impartial, temperate, firm, mindful of futurity, virtuous, attentive, uninfluenced by passion."‡

Tribe of the representative.

19. If such a Brahmin cannot be found, the king may appoint a *Cshetrya* or a *Vaisya*, but not a *Sudra*, as *Ca-*

\* Cited in the *Smritichandricā*, *Calpataru*, *Madhавеया*, *Veeramitrodaya*, *Vivādatandava*.

† *Yājñyavalkya*, cited in the *Vyavahāramayūka*, *Veeramitrodaya*, *Dīpākalika*, *Smritichintāmani*, *Vivādatandava*, and by *Aparāditya*.

(a) III. R. and M. If the monarch, from press of other business, cannot adjudicate, he shall appoint a Brahmin versed in the whole law, [to preside] with the judges.

‡ Cited in the *Smritichandrica*, *Calpataru*, *Veeramitrodaya*, and *Smritichintāmani*.

*Yājñana* has said : " Where there is not a [qualified] Brahmin, he may appoint a man of the military or mercantile tribe who is conversant with jurisprudence, but a *Sudra* must carefully be avoided."\*

20. *Nāreḍa* has mentioned this representative as a principal : " Taking the sacred code of laws as his (guide,) and deferring to the opinion of the chief judge, let the king deliberately and regularly investigate judicial proceedings."†

Supremacy of  
the chief judge.

21. *Deferring to the opinion of the chief judge* :] Not relying exclusively on his own ; in like manner as a king by means of his spy beholds the army of his enemy.

Explanation of  
the text.

22. The term *Pradvivak*, or chief judge, is etymologically appropriate. He interrogates (*Prichāli*) the plaintiff and defendant : hence is derived by grammatical rules the active participle *prat*, the interrogator. With the assessors he weighs or investigates (*vivechyaute*) the truth or falsehood of their assertions : hence is derived *vivak*, the investigator : hence, by the compound, he is termed *Pradvivak*. It is said, " He who, with (*in the presence of*) the assessors, carefully inquires into the subject matter, and investigates the point at issue, is termed the *Pradvivak*, or chief judge."‡

Etymological  
derivation of the  
term.

23. So also.

IV. " Those judges who act unconformably to the laws, or otherwise improperly, are to be severally amerced in twice the amount of the suit, whether under the influence of partiality, avarice, or fear."||(a)

Punishment of  
unrighteous judges.

\* Cited in the *Smritichandricā*, *Calpataru*, *Madhaviya*, *Dipacalica*.

† *Nāreḍa*, cited in the *Veeramilrodaya* and *Vivādatandava*.

‡ *Vyāsa*, cited in the *Vivādatandava*, and by *Calpataru*.

|| *Yājñawalkya*, cited in the *Dipacalica*, and by *Mitramisra*, *Aparāditya*, &c.

(a) IV. R. and M. Should the judges, from partiality, from love of gain, or from fear, act in anywise contrary to law or usage ; each one [so acting] shall be amerced in double the value of the suit.

Explanation of  
the text.

24. *Those judges who act unconformably to the laws:]* In opposition to the sacred code.—“*Or otherwise improperly:*” Inconsistently with approved usage.—“*Under the influence of partiality:*” Swayed by undue bias.—*Avarice*, excessive desire of gain.—*Fear*, terror: or otherwise subdued by the prevalence of their passions;—“*are to be severally,*” one by one,—“*amerced in twice the amount of the suit,*” in double the penalty incurred by the losing party, not in twice the value of the thing in dispute; for were such the law, in actions relative to adultery and the like, there could be no fine.

Penalty incurred  
only where the  
wrong is wilful.

25. The specific mention of partiality, avarice, or fear, implies, that the penalty of twice the amount does not extend to cases of error, inadvertence, or the like. Such is the import of the injunction.

Brahmins may  
be amerced.

26. “The king is superior to all, except Brahmins.”\* From this text of *Goutama*, it must not be inferred that Brahmins are exempt from amercement, for the text is intended merely for the purpose of generally extolling the Brahminical tribe. It is ordained in the *Sutra*: “Six things are to be avoided by the king [acting with respect to the Brahmins:] The punishment of flagellation, of imprisonment, of amercement, of banishment, of reprimand, and of expulsion.”† But the excepted person must be eminently learned, skilled in worldly affairs, in the *Vedas* and *Vedangas*: intuitively wise, well stored with tradition and historical wisdom, continually revolving these subjects in his mind, conforming to them in practice, instructed in the forty-eight ceremonies, devoted to the observance of his three-fold and six-fold duties

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\* Cited in the *Vearamitrodaya*, *Dandaviveca*, and *Vivadatandava*, as the text of *Goutama* and *Vasishtha*.

† Cited in the *Dundaviveca* and *Vivadatandava* as the text of *Goutama* and *Vasishtha*.

and versed in local usages and established rules.\* The mere order of priesthood is not sufficient to exempt.

## SECTION II.

### *On the Subject of a Judicial Proceeding.*

1. The subject of a judicial proceeding is now propounded.

V. "When a person aggrieved by another in a manner contrary to law or approved usage, represents it to the king, or the chief judge, that representation is termed the subject of a judicial proceeding."†(a)

Subject of a judicial proceeding defined.

2. When a person aggrieved or distressed by another, in a manner or through means inconsistent with, or contrary to approved usages or law, represents or sets forth his grievance to the king, or chief judge, that grievance so represented is termed the subject of a judicial proceeding, the component parts of which are the declaration or charge, and the answer, and, which forms the groundwork of deliberation, evidence, and decision and judgment. This is its general definition.

Explanation of the text.

3. A charge or declaration is two-fold, presumptive and positive, as *Nāreda* has declared: "Allegations are comprized under two heads, presumptive and positive, depending on presumption or certainty. Presumption may arise from a

Charges are two-fold. Presumptive and positive.

\* Cited in the *Veeramitrodaya*, and *Vivādatandava*.

† *Yājñavalkya*, cited in the *Deepacalica*, *Veeramitrodaya*, *Subodhini*, *Smṛitichintāmani*, *Vivādatandava*, *Vyavahāramayūc'ha*, *Madhaviya*, and *Smṛitīsāra*.

(a) V. R. and M. When one who is aggrieved by others, in any way contrary to law or usage, makes a representation to the monarch; this is matter for a law-suit.

person's keeping bad society, and certainty from some visible proof, as seeing the stolen property," &c.\*

Positive charges  
are two-fold, for  
commission or  
omission.

4. A charge or declaration founded on certainty, is of two descriptions, of omission and of commission. The former is exemplified by this allegation, "He has received my gold, (or other article,) and will not restore it;" and the latter, "He has forcibly seized my land." *Catyáyana* has propounded the distinction, "He is unwilling to do justice, or he does an act of injustice."†

Subjects of judi-  
cial proceedings  
are eighteen fold.

5. Subjects of judicial proceeding are propounded as being of eighteen sorts, according to *Menu*. "Of those titles, the first is debt, or loans for consumption; the second, desposits, and loans for use; the third, sale without ownership; the fourth, concerns among partners; the fifth, subtraction of what has been given; the sixth, non-payment of wages or hire; the seventh, non-performance of agreements; the eighth, rescission of sale and purchase; the ninth, disputes between master and servant; the tenth, contests on boundaries; the eleventh and twelfth, assault and slander; the thirteenth, larceny; the fourteenth, robbery and other violence; the fifteenth, adultery; the sixteenth, altercation between man and wife, and their several duties; the seventeenth, the law of inheritance; the eighteenth, gaming with dice, and with living creatures: these eighteen titles of law are settled as the groundwork of all judicial procedure in this world."‡

Diversity of  
claims,

6. These also are greatly multiplied by the diversity of claims, as *Náreda* has declared: "Of these also the distinc-

\* Cited in the *Vivádatandava* and *Smritichintámāni*.

† Cited in the *Vivádatandava* and *Veeramitrodāya*.

‡ *Menu* 8, § 5, 6, and 7. Cited in the *Smritichintámāni*, *Vyavahāra-mayūc'ha*, *Deepacalica*, *Medhatithi*, *Vivádabhangarnava*, and by *Mitrāmisa*, *Cullucabhutta*, and *Govind Raj*, but in the *Vivádatandava* as the text of *Menu* and *Marichi*.

tions are a hundred-and-eight-fold. From the diversity of men's claims, there are a hundred ramifications."\*

7. From the words, "when a person aggrieved represents to the king," it follows that he himself should come forward and voluntarily make the representation, and not at the instigation of the king or his officer, or their deputies, as *Menu* has declared: "Neither the king nor his officers must ever promote litigation, nor on any account neglect a law-suit instituted by others."†

Complaint should be made voluntarily.

8. *By others.*] This term includes the singular, dual, and plural number. Hence it is evident that an allegation may be made by one, two, or more persons against the same individual. But the following text of *Nāreda*, "An allegation of one person against many, of females or a servant, must be rejected, as is declared by those who are conversant with law,"‡ applies to a case where issues are distinct.

There may be many complainants against one.

### SECTION III.

#### *Process of Citation.*

1. From the words "represents it to the king," (Section 2, §§ 1,) it appears that the complainant, after being interrogated, should humbly state his case. Should the representation appear just, his adversary, unless exempted by infirmity, should be summoned by means of an order under seal, or so forth. This is an obvious consequence, and has not therefore been noticed by the author, although expressly enjoined in other treatises.

Summons to be served on him against whom the allegation is made.

\* Cited in the *Virādatandava* and *Veeramitrodaya*.

† *Menu* 8, 43. Cited in the *Veeramitrodaya*, *Medhatithi*, by *Cullucabhatta*, *Govind Raj*, *Mītramisra*, and in the *Madhaveeya* and *Smritichintāmani*.

‡ Cited in the *Veeramitrodaya*, *Vyavahāramayūc'ha*, *Madhaviya*, *Smritisāra*, *Smritichandricā*, *Deepacalica*, *Virādachandra*.

Complainant to  
be interrogated  
previous to sum-  
mons being issued.

2. "A king should thus interrogate a person coming before him, at a proper time, in a respectful attitude, saying: "Fear not, O man, but disclose by whom, where, when, and from what cause, your grievance arises."\* He should then, in conjunction with Brahmins and his assessors, deliberate on the representation thus made; and should it appear reasonable, he shall deliver to him (the complainant) a summons, or depute an officer for the purpose of citing the adverse party."†

Who should not  
be summoned.

3. "A sick person, a minor, an old man, one surrounded with difficulties, or occupied with religious ceremonies, or those whose absence would be detrimental to their interests, or who are in distress, (*i. e.*, who are afflicted for the loss of their or his beloved object,) or engaged in the affairs of government, or in the celebration of a festival, should not be summoned. The king should not summon one intoxicated, deranged, or idiotic, or persons in grief, or servants, or those who are dependant."‡

Further excep-  
tions.

4. "Nor a young woman who is without her husband, nor any woman born of a noble family, nor one lately delivered, nor a damsel of the highest tribe. These are termed dependant or their relations."||

Who may be  
summoned.

5. "But women whose families are dependant on them, profligates and harlots, those who are expelled from their family, or degraded, may be summoned."¶

\* *Catyañjana*, cited in the *Smritichandrica*, *Calpataru*, *Vyavahāramayūc'ha*, and *Madhaviya*.

† *Catyañjana*, cited in the *Vyavahāramayūc'ha*.

‡ *Catyañjana*, cited in the *Vyavahāramayūc'ha*, and in the *Smritichandricā*, as the text of *Harreta*.

|| *Catyañjana*, cited in the *Vyavahāramayūc'ha*, *Smritichandrica*, &c.

¶ *Ibid*,

6. "Having ascertained the time, place, and comparative importance of the charge, the king may summon even those who are sick, [causing them to be conveyed] slowly in a carriage."\* "Having inquired into the complaint, the king may mildly summon those who have absconded into forests."†

Those exempted may be summoned in certain instances.

7. The legality of arrest is also inferrible from the context. It has been described by *Nāreda*: "A person being about to prefer a claim, may arrest his adversary evading it, or not giving satisfaction in the matter, until the arrival of the summons."‡

Of arrest.

8. "Arrest is four-fold : local, temporary, inhibition from travelling, or from pursuing a particular occupation ; and the person under such arrests must not break them."||

Arrest four-fold.

9. "One who being arrested at a proper time breaks his arrest, is to be fined, and one arresting improperly is liable to penalty."¶

Of breaking arrest.

10. "No culpability attaches to him who breaks an arrest put upon him while crossing a river, or place difficult of access, or while in an inhospitable country, or otherwise in perilous circumstances." "One desirous of celebrating his nuptials, afflicted with disease, about to perform a sacrifice, surrounded by difficulties, sued by another party, transacting the affairs of government, cowherds while in the act of tending their cattle, husbandmen in the act of cultivation, artizans engaged in their trades, soldiers engaged in war-

Improper arrest.

Exemptions for arrest.

\* *Catyañya*, cited in the *Vyavahāramayūcha*.

† *Hareeta*, cited in the *Smṛitichandrica*.

‡ *Nāreda*, but *Menu* in the *Smṛitichandrica*.

|| *Nāreda*.

¶ *Nāreda*.



fare, are not to be arrested by the party, nor summoned by the king.”\*

Meaning of the term.

Sick and other exempted persons may appear by deputy.

11. Arrest signifies detention by order of authority.

12. Those who are sick and the rest [the other exempted persons] may depute a son and so forth, a relation or other friend. Such persons cannot be charged with officiousness, as described in the following text of *Náreda* : “He is guilty of officiousness, who is neither the brother, the father, the son, nor the constituted agent [of the party] ; should he interfere, he is liable to amercement.”†

#### SECTION IV.

##### *Of the Declaration.‡*

1. When the adversary shall be brought in by means of a summons, order, or king’s officer, it is next propounded what is to be done.

Method of recording the declaration.

VI. “The declaration of the complainant, as represented by him, should be written in presence of his adversary, distinguished by the year, month, fortnight, day, time, tribe, &c.”|| (a)

\* *Náreda*, cited in the *Vivadatanḍava*, *Vyavahāramayūc’ha*, *Smritichintamani*, and *Veeramitrodaya*.

† *Náreda*, cited in the *Vivadatanḍava*, *Vyavahāramayūc’ha*, *Veeramitrodaya*, *Smritichintamani*, and *Vivadarnavasetu*.

‡ In the Hindu law, the same term which signifies a judicial proceeding generally, applies both to civil actions and criminal prosecutions ; and as the method of conducting the investigation is in both cases the same, it will be necessary to use the terms “charge,” “declaration,” &c. with reference to the subject matter.

|| *Yājñyavalkya*, cited in the *Deepacalica*, *Veeramitrodaya*, *Smritichandrica*, *Vyavahāramayūc’ha*, *Vivadatanḍava*, *Madhaviya*, *Smritisāra*, and by *Aparāditya*, *Vishwarūpa*, &c.

(a) VI. R. and M. The representation, as made by the plaintiff, is to be put in writing, in presence of the defendant ; the year, month, half-month, day, names, cast, &c. being given,

2. What is declared or alleged is the thing to be proved. The person declaring or alleging is the plaintiff, or the complainant. His adversary is the defendant, or party complained against. "*Should be written in his presence:*" before his face. "*As represented:*" in the same manner as the statement was made at the time of making the first representation; not otherwise, for if there is any variation, it may prove fatal to the cause.\*

Declaration  
what to contain.

3. A prevaricator, one who needlessly attempts to vitiate the proceedings, one who does not adduce his evidence, one standing mute, and one who being summoned absconds, are five persons who are to be non-suited.

Causes of non-  
suit.

4. As the statement of the complainant was taken down in writing at the time of making the original representation, it would seem superfluous to enjoin that they should be again written; but at the second writing more particulars are mentioned, as of the year, month, fortnight, day, moon's age, and day of the week, name of the complainant and of his adversary, their tribes, whether Brahminical or the like.

Reasons for a  
second record of  
the complaint.

5. By the term, other particulars, is meant the quality, quantity, time, place, motive of forbearance, &c., as has been stated: "That is termed a charge or declaration which is

Further parti-  
culars to be com-  
prized in the de-  
claration.

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\* Formerly, all actions (in the Common Pleas, at least, then the common court for determining civil suits between subject and subject) were commenced by original writ. This original writ contained, pretty much at length, the nature of the injury which the plaintiff had sustained. Upon this, processes of different kinds, adapted to the species of the original writ which the plaintiff had made use of, were sued out, directed to the sheriff of the county where the defendant resided, to cause him to come into court; and then the plaintiff was to make his declaration, which was nothing more than an exposition of the original writ, enlarged by a specification of *time* and *place* and other circumstances, but so as not to vary materially from the writ, which if it did, would have made the writ, and consequently the suit founded thereon, ineffectual and nugatory.—*Summary Treatise on Pleading.*

significant, technically precise, comprehensive, unconfused, direct, unequivocal, conformable to the original complaint, probable, uncontradictory, clear, susceptible of proof, concise, not deficient, not at variance with respect to place and time, comprising the year, season, month, fortnight, day, hour, country, situation, place, neighbourhood, the complaint and its nature, the tribe, appearance, and age of the adverse party, the dimensions and quantity of the property in dispute, the names of the complainant and his adversary, the names of their respective ancestors, and of the ruling kings, the motives of forbearance, the grievance done, and the names of the original acquirer and grantor.”\*

Difference between the first complaint and the declaration.

6. All this being represented to the king, is termed the declaration or charge. At the time of originally preferring the complaint, the subject only is stated; and before the adversary, the particulars of the year, month, date, &c. are inserted. This constitutes the difference [between the original complaint and the declaration.]

Cases in which the date should be specified.

7. Although the specification of the year is not requisite in all cases, yet in the instance of pledge, acceptance, purchase, and sale, it is indispensable to the decision, as appears from the following text: “In the case of a pledge, gift, or sale, the prior transaction has the greater validity.”† In mercantile transactions also, if a person had received in a certain year, a certain quantity of a certain article which he restored, and in another year he had received precisely the same article, and of the same quantity from the same person, and if being sued, he should admit the receipt, but plead resto-

\* *Catyañjana*, cited in the *Smṛitichintamani*, *Vivadatāndava*, and *Vyavahāramayūc'ha*.

† Quotation from an uncertain author in the *Vivadatāndava*, *Feerami-trodaya*, *Vyavaharamatrka*, and *Vivadachandra*; but from *Yājñavalkya* in the *Mitācsharā* and *Smṛitisara*; and the reading of the text is different by several authors.

ration, it would be necessary for the plaintiff to rejoin, that the restoration was of that article delivered in the former year. The month, and so forth, also should be specified.

8. The specification of the country, the local circumstances, spot, &c., as well as of time, is requisite in cases of immoveable property, as appears from the following text: "The country, place, site, tribe, name, neighbourhood, dimensions, nature of the soil, the names of ancestors and of the former kings: these ten should be specified in a suit for immoveable property."\*

Cases in which local circumstances should be specified.

9. "*The country*:" central region, and so forth, or otherwise. "*Place*:" city of Benares or the like. "*Site*:" the houses or lands by which the property is bounded on all sides. "*Tribe*:" the order of the parties, whether Brahminical or other. "*The name*:" as *Devadutta*, or the like. "*The neighbourhood*:" the persons who reside in the vicinity. "*The dimensions*:" in *beegaks* or other land-measure. "*Nature of the soil*:" rice fields, plantation of betel-nut, muddy or clayey soil. "*The names of ancestors*," and "*of the former kings*:" the designations of the ancestors of the parties, and also of the former reigning powers. By prescribing the specification of the year, month, &c., it is only intended, that the dates should be inserted as far as may be requisite in particular cases.

Explanation of the text.

10. The above being the requisites of a declaration, it follows, that, if it is deficient in any of these requisites, it becomes merely the semblance of a declaration. This semblance of a declaration has not been separately defined by the venerable author, but by others it has been accurately defined: "Declarations should be rejected as mere semblances,

Semblance of a declaration.

\* *Catyañjana*, cited in the *Smṛitichandricā*, *Utpatara*, and *Smṛitichintāmani*; but an unnamed author in the *Vivādatandava* and *Pyaravāhramayūc'ha*.

which are absurd, uninjurious, unmeaning, frivolous, unsusceptible of proof, at variance with possibility.\*

Explanation of  
the preceding text,

11. "*Unnatural*:"† as, Such a person has taken the horn of my hare, and will not restore it. "*Uninjurious*:" as, Such a person transacts business in his own house by the light of a lamp which burns in mine. "*Unmeaning*," [not having any signification:] as, the unmeaning connection of letters. "*Frivolous*:" as, This *Devadutta* warbles a sweet song near my house. "*Unsusceptible of proof*:" as, *Devadutta* ridicules me by a supercilious look: as this cannot be proved, it is termed, unsusceptible of proof; from the momentary nature of the action, no witnesses can be procured; much less written evidence; and from the trifling nature of the complaint, an ordeal cannot be resorted to. "*At variance with possibility*:" as, This dumb man cursed me: or at variance with local interests: "That complaint which is prohibited by the government, or detrimental to the interests of a city or country, or to the different classes of society, is pronounced to be inadmissible."‡

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\* *Catyañjana* in the *Smritichandricá*, *Madhaviya*, *Vyavaháramatrica*, but *Náreda* in the *Smritisátra*, and uncertain in the *Vivádatandava*, *Vyavaháramayūc'ha* and *Vivádashundra*, and *Vrihaspati* in the *Smritichintámani*.

† The following illustrations may seem frivolous; but other systems descend to similar *minutiae*. For instance. A condition precedent of which the subject is an event physically impossible at the time of entering into the contract, renders the contract null, if it refer to an act to be done: and is itself null, leaving the obligation pure and simple, if it refer to the act as not to be done. Thus if a man make a promise or a grant under a condition that the grantee do scale the sky, touch the moon, draw a triangle without angles, travel over Britain in an hour, go from Westminster to Rome in a day, the promise or grant is void. But one made upon condition that he do not scale the sky, nor touch the moon, &c. is valid and unconditional, the condition being nugatory.—*Colebrooke*, *Obligations and Contracts*, Book 3, §§ 203.

‡ *Náreda*, cited in the *Smritisátra*, but *Vrihaspati* in the *Smritichintámani*, *Madhaviya*, *Veeromitrodaya*, and uncertain in the *Vivádatandava*, *Vyavaháramayūc'ha* and *Vivádashundra*.

12. But the text, "A declaration comprising several distinct subjects is inadmissible,"\* is not intended to vitiate a claim involving many distinct articles: for instance, if a man should sue another for taking his gold, cloths, silver, &c. there is no error in the declaration. Nor should it be alleged, that a declaration involving a claim of debt combined with other topics is invalid: as for instance, if one should allege, "Such a one has borrowed silver money from me at interest; gold has been deposited with him, and my field has been usurped by him." Such a declaration is good. All that is intended is to invalidate a simultaneous investigation. "It being ascertained, that in a judicial proceeding there are allegations of various matters, the king being desirous of investigating the merits, may enter upon them at pleasure."† Hence the meaning of a declaration involving many topics being inadmissible, is, that they should not be entered upon all at once.

A declaration is admissible, though involving many matters.

13. The term plaintiff or complainant includes the sons and grandsons of those persons, their interests being equally involved; so also is a constituted agent included, because his appointment creates in him a similar interest, as appears from the following text: "A person being appointed by the plaintiff or complainant, or deputed by the defendant, or person complained against, who acts on behalf of his principal, suffers defeat or success."‡ The principal participates in the success or failure of his representative.

The term plaintiff or complainant includes their sons, grandsons and agents.

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\* Quotation from *Nāreda* in the *Vivādatandava*, but from *Catyāyana* in the *Madhveeya*, *Smṛitichandricā*, *Calpataru*, and uncertain in the *Vyavahāramayūc'ha*, *Smṛitisāra*, and *Vivādachandāra*.

† Cited in the *Vyavahāramayūc'ha*, *Smṛitisāra*, *Madhveeya*, *Vivādachandāra*, and *Veeramitrodaya*.

‡ *Nāreda*, cited in the *Vyavahāramayūc'ha*, *Smṛitichintāmani*, *Calpataru*, *Smṛitisāra*, but *Catyāyana* in the *Smṛitichandrica*.

Mode of recording the declaration.

14. This (the declaration) having been written on the ground, or on a board with chalk, is to be corrected by the rejection of superfluities, and afterwards recorded on a leaf, as appears from the following text of *Catyáyana*: "The judge shall cause to be taken down the spontaneous statement of the plaintiff or complainant on a board with chalk, and afterwards, being corrected, on a leaf."\*

\* Corrections may be made until the answer is given in.

15. The declaration may be amended until the answer is given in, but not afterwards, lest there should be infiniteness. Hence the text of *Náreda*: "He may amend his declaration until the answer is given in; but being stopped by the answer, the corrections must cease."†

Answer must not be taken before the declaration has been amended,

16. If the judges cause the answer to be given in before the declaration is amended, they incur the penalty prescribed for anger and avarice; and the king must investigate the claim, after having obtained a fresh declaration.

## SECTION V.

### *Of the Answer.*

1. What is to be done after the amended declaration has been recorded, is next propounded.

Answer to be written.

VII. "The answer of the party who has heard the declaration must be written down in the presence of the plaintiff."‡ (a)

\* Cited in the *Vyavaharamayuc'ha*, *Smritichintamani*, *Dipacalica*, *Madhavacya*, and *Vyavaharamatrica*.

† Cited in the *Vivadatanidava*, *Vyavaharamayuc'ha*, *Madhavacya*, *Vivadarnavasetu*, *Vivadachandra*, but *Catyáyana* in the *Smritisara*.

‡ *Jájnycastleya*, cited in the *Vivadatanidava*, *Vyavaharamayuc'ha*, *Smritichintamani*, and *Smritisara*.

(a) VII. R. and M. The answer [of the defendant] to what he has heard [read] is then to be put in writing, in presence of him who made the first representation.

2. The adverse party having heard the substance of the declaration, his answer, or that which follows the declaration, is to be written down in the presence of the plaintiff, that is, the claimant or complainant.

Explanation.

3. That which is calculated to refute the first statement is an answer, as appears from the following text: "The wise have held that to be an answer which embraces the declaration, which is solid, clear, consistent, and obvious."\*

Requisites of an answer.

4. "*Which embraces the declaration:*" capable of refuting it. "*Solid:*" not inconsistent with reason. "*Clear:*" not admitting of doubt. "*Consistent:*" agreeing in all its parts. "*Obvious:*" that which needs not the explanation which would be required by the use of uncommon words, or by ungrammatical terminations or collocation of words, or by the use of elliptical phrases or of a foreign dialect. Such has been termed a true answer.†

Further explanation.

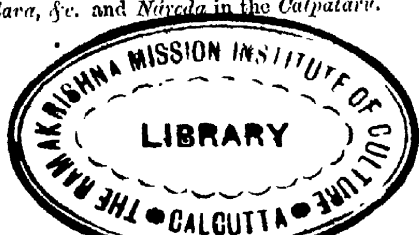
5. An answer is four-fold, a confession, a denial, a special plea, and plea of former judgment, as *Catya'yana* has declared: "A confession, a denial, a special plea, and a plea of former judgment, are four sorts of answer."‡

Four kinds of answer.

\* *Nāreda* (not found in his Institutes) cited in the *Vivādatandava*, *Vyavahāramayāc'ha*, *Smritichintamani*, *Smritisara*, *Vivadarnavasetu*, *Vivādashandra*, *Vecramitrodaya*, *Calpataru*, and *Prajapati* in the *Smritichandrica*, and *Madhaveeya*.

† The conditions and qualities of a plea (which, as well as the doctrine of estoppels, will also hold equally, *mutatis mutandis*, with regard to other parts of pleading), are, 1st. That it be single, and containing only one matter; for duplicity begets confusion. But by stat. 4 and 5, Anne, c. 16, a man with leave of court may plead two or more distinct matters or single pleas. 2nd. That it be direct and positive, and not argumentative. 3d. That it have convenient certainty of time, place, and persons. 4th. That it answer the plaintiff's allegations in every material point. 5th. That it be so pleaded as to be capable of trial.—*Law Dic. Art. Pleading*.

‡ Cited in the *Vivādatandava*, &c. and *Nāreda* in the *Calpataru*.



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Nature of confession.

6. A confession is exemplified as follows. The plaintiff declares, "This person is indebted to me in a hundred pieces of silver," and the other replies, "It is true, I do owe him that sum," as *Catya'yana* has said: "The admission of a claim is termed a confession."\*

Of denial.

7. A denial is thus, "I do not owe him," as *Catya'yana* declares: "In law that answer is termed a denial, when the defendant or accused contradicts the charge or declaration."†

Denial is four-fold.

8. The answer by denial is four-fold, "total contradiction, plea of ignorance, of *alibi*, and of non-existence at the period of the alleged transaction."‡

Nature of a special plea.

9. "A 'special plea,' is, where the defendant admits the demand, but avoids it by pleading a general acquittance, or that he had received the money as a present, as *Náreda* has said: "Where an adversary admits a claim adduced in writing by a complainant, but avoids it by some specific circumstance, that is called a special plea."||

Of plea of former judgment.

10. "The plea of former judgment," is, when the adversary asserts that the complainant had formerly made a complaint against him in the same matter which was dismissed, as

\* *Vyasa*, cited in the *Vivadachintamani* and *Veeramitrodaya*, but uncertain in the *Vivadatatandava*.

† *Smritichintamani*, *Vivadatatandava*, *Smritisara*, *Vivadarnavasetu*, *Vivadachandra*, *Smritichandrica*, *Vrihaspati* in the *Calpataru*, and *Madhavecya*, *Náreda* in the *Vyavaharatatwa*.

‡ *Catya'yana*, in the *Vyavaharamayú'ha*, *Vivadatatandava*, *Smritichandrica*; *Náreda*, in the *Smritichintamani* and *Smritisara*; *Vyasa*, in the *Calpataru* and *Vivadamatrica*; *Prajapati*, in the *Madhavecya*; but uncertain in the *Vivadachandra*.

|| Cited in the *Vyavaharamayú'ha*, *Vivadatatandava*, *Smritisara*, *Smritichandrica*, *Veeramitrodaya*, *Vivadarnavasetu*, and *Vivadachandra*; but *Vrihaspati* in the *Madhavecya*, or both according to the citation in the *Calpataru*.

*Catyáyana* has said: "One against whom a judgment had formerly been given, if he bring forward the matter again, must be answered by a plea of former judgment."\*

11. These being considered as the component parts of an answer, it follows that an answer not comprizing these requisites is a mere semblance. This is a natural inference, but in other law tracts it has been expressly declared: "That is not an answer which is dubious, not to the point, too confined, too extensive, or not embracing all the parts of the declaration. That which is relative to other matter, incomplete, obscure, confused, not obvious, or absurd, is a faulty answer."†

Semblance of an answer.

12. "A *dubious* answer" is thus exemplified: as if in an action for debt, the plaintiff demanding 100 *suvernas*,‡ the defendant should admit that he is indebted in the sum of 100 *suvernas* or 100 *mashas*. "Not to the point:" as if in an action for debt of 100 *suvernas*, the defendant should reply by admitting a debt of 100 *panas*. "Too confined:" as if in an action for debt of 100 *suvernas*, the defendant should answer by admitting that he owes five. "Too extensive:" as if in an action for 100 *suvernas*, the defendant should reply by admitting a debt of 200. "Not embracing all the parts of the declaration:" as if in an action for gold, cloths, and other articles, the defendant should reply by merely admitting the debt of the gold, but of nothing else. "Which is relative to other matter:" as if in an action for debt of 100 *suvernas*, the de-

Explanation.

\* Cited in the *Smritichintāmani*, *Vyavaharamayūc'ha*, *Vivadatandava*, *Smritisura*, *Vivādarnavasetu*, and *Vivādachandra*; but *Vrihaspati*, in the *Calpataru* and *Madhaveya*.

† *Nāreḍa*, in the *Smritichintāmani* and *Vivadatandava*, but uncertain in the *Vyavaharamayūc'ha*.

‡ A weight of gold equal to sixteen *mashas*, which at five *ratties* to each *masha*, makes the *suverna* equal to about 176 grains Troy.

lendant should answer that he had been assaulted by the plaintiff. "*Incomplete*:" not embracing the particulars of country, place, and so forth; as if in an action to recover a certain field, the declaration should specify it as being situated in the central province to the eastward of the city of Benares, and the defendant in answer should admit generally having taken possession of a field, without specification. "*Obscure*:" as if in an action for 100 *suvernas*, the defendant should answer, Am I alone in debt to this man? which might signify that the chief judge, the assessors, or the plaintiff, were indebted to another person. "*Confused*:" contradictory in its parts: as if in an action for a debt of 100 *suvernas*, the defendant should answer that he received the money, but that he does not owe it. "*Not obvious*:" requiring explanation, in consequence of the use of ungrammatical composition, or collocation, or of a foreign dialect: as if a person being sued for a debt incurred by his father to the amount of 100 *suvernas*, should answer, "By the information of the receiver of the hundred of my father, I know nothing of the *suvernas*:" instead of saying, I did not learn from my father that he received the 100 *suvernas*. "*Absurd*:" contrary to reason and common sense: as if in an action for debt, the plaintiff should claim the sum of 100 *suvernas* alleged to have been lent out at interest, stating that he had received the interest, but not the principal, and the defendant should answer that he had paid the interest, but had not received the principal.

Confusion of  
pleas inadmissible.

13. By using the term answer in the singular number, it follows that a confusion of pleas is inadmissible. "That answer which confesses to a part, specially excepts to a part and denies a part, is not a proper answer, from its confusion."\* The above is a text of *Catyáyana* who has pro

\* Cited in the *Smritichandrica*, *Vyavaháramayúka*, *Vivádatandava*, and *Veeramitrodaya*.

pounded the reason why such answer is improper : “ In one suit, the proof cannot rest on both parties, nor can both obtain judgment, nor can two answers be offered at once.”\*

14. But it might be contended, that in an answer involving denial and a special exception, the proof would rest with both parties ; for as it has been recorded, that “ in the case of a total contradiction, the proof rests with the complainant, and in the case of a special exception, with his adversary.”† Both pleas, however, cannot be admitted in one case : as if in an action for debt of 100 *suvernas*, and also of 100 rupees, the defendant should deny the first claim, and specially except with regard to the second.

Case of a denial and special exception.

15. On the other hand, in the case of an answer involving a special exception and a former judgment, the defendant must substantiate both pleas, as has been said : “ The proof rests with a defendant pleading a former judgment and a special exception.”‡ As if one should say, I received the gold, but returned it; and as to the silver, I was sued in a former action, and judgment was given against the plaintiff. But this is incompatible, because the first plea must be substantiated by the decree and the adjudicants, and the second by witnesses and documents.

Case of a former judgment and special exception.

16. An answer involving three pleas is now to be considered : as if in an action to recover 100 *suvernas*, 100 rupees, and cloths, the defendant should deny the first claim, plead an acquittance as to the second, and former judgment as to the cloths ; and so with an answer involving four pleas.

Case of an answer involving three or four pleas.

\* Cited in the *Smṛitichandriā*, *Vyavahāramayūc'ha*, *Vivādatandava*, and *Veeramitrodāya*.

† *Nārada* in the *Vyavahāramayūc'ha*, but uncertain in the *Vivādatandava* and *Madhavesya*.

‡ *Vyāsa* and *Hareeta* in the *Vyavahāramayūc'ha*, but uncertain in the *Vivādatandava* and *Vivādashandriā*.

These, when brought forward all at once, constitute no answer.

Must be taken separately.

17. But as the several counts cannot be answered without their respective pleas, these must be urged separately in succession.

The most weighty plea should be first examined.

18. Their order will be regulated by the inclination of the parties and the judges; but in the case of two pleas coming together, that which is most important should first be acted upon, proceeding afterwards to that which is less important.

Confession to be acted on after all other pleas.

19. But where there is a confession in conjunction with another plea, issue is to be taken on that other plea, because there is no proof required to a confession, as *Hareeta* has declared: "If it should be asked, which plea is to be first considered, when there is a junction of a total denial and a special plea, or of a confession with another plea? the reply is, that which is most important, or which is most material to the decision of the suit, is to be taken as a distinct answer, or else otherwise"\* that is to say, where there is no distinction, the order is regulated by the inclination of the parties.

The term "most important plea," means that which is followed by most proceedings.

20. The meaning of "that which is most important" is next propounded. In an action to recover one *sucernas*, 100 rupees, and cloths, if the defendant should confess the first claim, totally deny the second, and plead a release for the third, here the total denial, from its being the most important, being acted upon by taking the plaintiff's proof, the investigation must proceed. The third plea regarding the cloths follows next. The same order is to be preserved in

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\* Cited in the *Shrīti-chandricā*, *Madhaveraya*, *Vyārahāramayāc'hā*, *Vīradatandava*, and *Smṛitiśāra*. He and *Vyāsa* in the *Vyārahāramayāc'hā*, but uncertain in the *Vīradachandā*; and *Vyāsa* in the *Calpataru*.

the case of its junction with a denial, or a plea of former judgment, or special exception: as if in a suit of the nature above specified, the defendant should confess the debt of the gold and silver, and declare himself willing to re-pay it, but should deny with respect to the cloths, or should plead restoration of them, or that judgment was given against the plaintiff in a former action for them; here, although the confession involves the most weighty matter in dispute, yet as it is followed by no adducement of evidence, the denial or other pleas are first to be considered in the investigation of the suit.

21. But in a case where two pleas apply to one and the same charge, as if a person should arraign another, alleging that he had lost at a certain time a certain cow belonging to him, which had subsequently been found in the house of the other, and the defendant should assert that the allegation is false, and that the cow was in his house previously to the period mentioned by the plaintiff, or that it had been born in his (the defendant's) house. This should not be called a faulty answer, because it is calculated to rebut the charge: it is not a simple denial, as it involves a justification; nor is it a special exception, as it does not admit any part of the allegation; but it is an exculpatory negation, and the proof rests with the defendant, in conformity to the rule prescribing that the proof of justification depends on the defendant.

In a case of two pleas applying to one and the same count, proof rests with the defendant.

22. But if it be objected, that this might as well be alleged to be the business of the plaintiff, as is prescribed in cases of denial, it is answered, that the rule in question relates only to cases of simple denial. Should it be rejoined, that it might as well be affirmed that the rule prescribing the proof to rest with the defendant, also relates only to a simple special exception, the answer is, that this is incorrect,

And not with the plaintiff.

as a special plea involves a denial, and there is no such thing as a simple special plea.

Distinction between an exculpatory negation & a simple denial.

23. In general, a special plea consists partly of admission, and partly of denial; as for instance, an admission of the receipt of 100 rupees, but succeeded by a plea neutralizing the admission: but in the instance above quoted there is no partial admission, which constitutes the distinction. This has been clearly stated by *Hareeta*: "When an answer involves a denial and a special plea, the special plea is to be first considered."\*

Proof rests with the defendant, in pleading denial and former judgment.

24. Where the pleas of denial and former judgment apply to the whole matter charged, there also the proof rests with the defendant; as in an action for the recovery of 100 rupees, if he should deny, and at the same time plead former judgment; as appears from the following text: "In the junction of a denial with a special plea or former judgment, the defendant should adduce the proof."† There is no such thing as a pure plea of former judgment, for this would be no answer.

A confession is a good answer.

25. But a confession is a good answer by itself, because by establishing the truth of the matter adduced to be proved, it excludes the necessity of proving it.

In a case of special plea and a plea of former judgment, defendant may select his own plea.

26. And where there is a junction of a special plea and of a plea of former judgment, as if a person being sued by another for a hundred pieces of money, should reply by an admission of the receipt, a plea of redelivery, and a plea of former judgment, it is optional with the defendant, [that

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\* Cited in the *Madhавеया* and *Smritichandricā*, but *Vyāsa* in the *Calpataru*.

† *Hareeta* and *Vyāsa* cited in the *Vyavahāramayūc'ha*, but uncertain in the *Vivādatandaya* and *Vivādashandra*.

is, it is optional with him which of the two pleas he will proceed first to substantiate.)

27. But in no instance can two adverse parties plead at the same time in one cause.

Both parties not to plead at once.

## SECTION VI.

### *Of the Onus Probandi and Judgment.*

1. The establishment of the claim being dependant on evidence, it is propounded by whom that evidence is to be adduced.

On delivery of answer, evidence shall instantly be adduced.

VIIA. "The claimant shall immediately reduce to writing the evidence of the thing to be proved."\*(a)

1a. After the answer, the claimant, that is to say, he who has the matter to prove, shall reduce to writing immediately, without any interval, the evidence, or that by which the matter is to be proved. From the injunction of its being immediately reduced to writing, it may be inferred, that in furnishing an answer, delay is occasionally allowed: this point will be subsequently considered. The meaning appears to be, that, as the necessity of proceeding without delay was not prescribed in the case of giving in the answer, as it has been in the case of recording the evidence, time is occasionally allowed in preparing the answer to the claim on the principle of "*expressio unius est exclusio alterius*."

2. From the direction that the claimant shall reduce to writing, &c. it follows, that he is to write down the evi-

In case of a former judgment or special plea, the

\* *Yājñavalkya*, cited in the *Smṛitichandricā*, *Vyavahāramayūc'ha*, *Madhareeya*, *Deepacalica*, and *Subodhini*; and by *Mitramisra*, *Viswarūpa*, and *Balambhatta*.

(a) VIIA. R. and M. And then the latter shall, at once, furnish a statement in writing of the proof to support what he has asserted.



defendant adduces  
proof.

dence of the matter adduced who has any thing to prove : hence, when former judgment is pleaded, as this is the matter to be proved, he who adduces that plea is the claimant. He (the defendant) therefore is considered as the claimant, and he must adduce the evidence. In a special exception also, as this is the thing to be proved, he who adduces that plea is the claimant, and he is the person to adduce the evidence.

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In a total de-  
nial, the plaintiff.

3. But in a case of total denial, the plaintiff is the claimant, and it rests therefore with him to adduce the evidence : hence, by the use of the expression " the claimant shall reduce to writing," it is meant, that he who has any thing to prove, is to do so, and not any other person.

In case of a  
confession, no  
evidence requisite.

4. Therefore, in a confession, as there is nothing to be proved, and neither of the parties have any claim, there is no evidence to be adduced, and the proceeding rests there, as has been clearly expressed by *Hareeta* : " When a special exception and former judgment are pleaded, the defendant shall adduce the proof : in a total denial, the plaintiff : in a confession, there is no issue."\*

VIII. " That being right, he obtains judgment ; and otherwise, the reverse."† (a)

Judgment must  
be given after  
adducement of  
evidence.

5. " That" means proof, consisting of documents, testimony, &c., as will be subsequently explained. That is, by the establishment of the accuracy of his evidence, whether

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\* *Vyāsa* in the *Calpataru*, and in the *Vyavahāricamayūc'h* as the text of *Vyāsa* and *Hareeta*, but uncertain in the *Vivādatandava* and *Vivāda-chandra*.

† This is the latter hemistich of a text of *Yājñavalkya* cited in the *Smṛitichintāmani*, *Vivādatandava*, *Deepakulica*, and *Subodhini* ; and by *Balambhatta* and *Mitrāmisra*.

(a) VIII. R. and M. This being established, he succeeds in his suit ; otherwise, the reverse.

oral or documentary, a party obtains judgment, consisting in the success of his claim. He obtains the reverse, or defeat, consisting in the loss of his claim, if it should happen otherwise.

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## SECTION VII.

### *Recapitulation.*

1. Having propounded summarily the nature of judicial proceedings, the author concludes the subject by a recapitulation.

Recapitulation.

VIIIA. "This judicial proceeding, exhibited relatively to causes in general, consists of four parts."\*(a)

1a. The judicial proceeding here alluded to (identical with those which the king is enjoined to investigate) is exhibited or explained as being divided into four parts, relatively to causes in general, whether actions for debt or others.

2. "The declaration of the complainant should be written in the presence of his adversary." This is termed the first division, or "the declaration." "The answer of the party who has heard the declaration must be written down in the presence of the complainant." This is the second division, and is called the answer. "The claimant shall immediately reduce to writing the evidence of the thing to be proved." This is the third division, and is termed the proof. "That being right, he obtains judgment; and otherwise, the reverse." This is the fourth division, and is termed the judg-

Quadruple division of a judicial proceeding.

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\* *Yājñavalkya*, cited in the *Smṛitichandricā*.

(a) VIIIA. R. and M. Thus it appears, the procedure in law-suits has four steps,

ment, as has been declared, "That is called a judicial proceeding which, in the conflicting interests of mankind, furnishes a decision grounded on law and equity."\* "It has four divisions, namely, the declaratory, replicative, probatory, and adjudicative, and is termed quadruple."†

Exception in  
case of confession.

3. But in the case of a confession, as there is no adducement of evidence, and as the claim does not require to be substantiated, there is no issue, and the proceeding has only two divisions.

Judicial deli-  
beration, not a  
distinct division  
of the proceed-  
ings.

4. The deliberation of the judges for the purpose of ascertaining, after the delivery of the answer, to which of the parties the adducement of evidence belongs, does not form a distinct division of the proceeding, not having been propounded as such by the venerable author,‡ and not being an act dependant on the parties themselves. Thus is concluded the general introduction to judicial proceedings.

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\* *Madhaveeya* and *Smritichandricā*.

† *Vyavahāramayūc'ha* and *Smritichandricā*, and by *Aparāditya*.

‡ *Yājñyavalkya*.

# CHAPTER II.

## OF RETORT OR RECRIMINATION.

### SECTION I.

1. Thus having propounded the general introduction to a judicial proceeding, which is common to all, the author proceeds to notice certain distinctions which prevail in particular cases.

Retort, &c. prohibited.

IX. "A person arraigned, not having cleared himself from the declaration, shall not retort; nor shall a person charge another who is already labouring under a charge, nor shall he introduce any thing foreign to his original complaint." \* (a)

2. That with which a person is charged, is the declaration: and the person arraigned, not having cleared or acquitted himself, shall not recriminate or retort on the complainant.

Explanation of the first part of the text.

3. But the objection does not apply to a plea of former judgment, as it involves the exoneration of the party complained against, although it is in some measure a retort: hence it is apparent, that the restriction is confined to a retort not having a tendency to refute the charge.

Recriminatory plea permitted, when exculpatory.

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\* *Yājñavalkya*, cited in the *Mādhaveya*, *Smṛitichandricā*, *Smṛitisāra*, *Deepācalicā*, and *Subodhini*; and by *Balambhatta* and *Mitramisra*.

(a) IX. R. and M. Let not a counter-complaint be preferred until the [original] complaint is disposed of, nor let a third person [sue] him against whom a complaint is pending. The statement of the cause of suit is not to be varied.

Explanation of  
the last part of  
the text,

4. Having thus restricted the party complained against, he proceeds to apply some observations to the complainant. A complainant shall not charge another with a matter which has been already charged against him, and of which he has not cleared himself, nor shall he introduce any thing foreign or contrary to what had been alleged at the time of his originally preferring the claim. It is declared, that whatever fact, in whatever manner it may have been represented at the time of preferring the original claim, that same fact should be reduced to writing in the same manner at the time of recording the declaration.

Objection re-  
plied to.

5. But [should it be objected,] that by formerly enjoining that the writing in presence of the party complained against must be the same as the original claim, it is consequently superfluous to repeat, that any thing foreign to that which has already been represented should not be introduced; the reply is, that the former text merely enjoins the necessity of recording the same subject as had been stated by the plaintiff at the time of his making the original claim, and not another subject in the same cause; as if the plaintiff, at the time of his preferring the original claim, should have declared that a certain person owed him the sum of 100 rupees with interest, he should not declare in presence of the adverse party at the time of recording the declaration, that the debt consisted of a hundred pieces of cloth with interest.

Distinction be-  
tween this and a  
former text.

6. Should he do so, this would be entering on another subject, the penalty of which would be non-suit and fine. But the text prohibiting the introduction of any thing foreign to the original claim prohibits also the shifting the nature of the proceeding, even though the subject of the proceeding be the same: as if the plaintiff, at the time of his making the original claim, should declare that another had borrowed 100 rupees from him at interest, and that he would not repay it;

and at the time of recording the declaration, he should charge his adversary with having taken by violence the same sum ; consequently, in the former instance, there is a prohibition against introducing a new subject, and in the latter a prohibition against entering on a new ground of action.

7. This has been clearly defined by *Nāreda* : "That man who forsaking his original claim rests on other grounds, is to be non-suited by reason of the confusion of his proceedings."\*

Text of *Nāreda*.

8. One who is non-suited is to be fined, but he does not therefore forfeit all claim to the subject matter. Consequently the injunction here introduced, " a person arraigned not having cleared himself," &c. is merely intended as admonitory to the parties against error, but it does not affect the validity of the original claim. Hence the ordinance subsequently declared, " The king shall investigate judicial proceedings in a *banā fide* manner, divested of inadvertencies."†

Non-suit does not invalidate the claim.

9. This must be understood as having relation to a civil action ; but in criminal prosecutions an error is fatal to the cause, as *Nāreda* has declared : " A verbal error is not fatal in civil actions ; should it appear in actions brought for seduction, or for debt, or for landed property, the plaintiff is to be amerced, but it does not annul his claim."‡ The meaning of this is, that in all civil suits, not involving criminal proceedings, a verbal error, or the appearance of inadvertency, is not fatal, or not destructive of the claim ; that

Difference in the case of a civil action from a criminal prosecution.

\* Cited in the *Smṛitichandricā*, *Vyavākāramayūc'ha*, *Vivādatandava*, *Veeramitrodaya*, *Calpataru*, and *Mādhaveeya*.

† *Yājñyawalkya*, cited in the *Smṛitichintāmani*, *Vivādatandava*, *Subodhini*, and *Dipacalica* ; and by *Viśvavāṛpa*, *Mitramisra*, and *Balambhatta*.

‡ Cited in the *Vyavākāramayūc'ha*, *Vivādatandava*, *Mādhaveeya*, and *Veeramitrodaya*.

is to say, the original claim is not rendered void. The example given is an action for seduction, &c.

Error fatal to a criminal prosecution, though not a civil suit.

10. As in actions for seduction, or for debt, or for landed property, by the appearance of inadvertency, the plaintiff is to be fined, but his original claim is not rendered void, so in all civil actions. From the specification of the term civil actions, it is inferrible, that in the case of a criminal prosecution, error is fatal to the cause. As if a man, at the time of making his original complaint, should assert that he had been kicked on the head, and at the time of recording his charge, should allege that he had received a blow of the fist on his foot. In this case, he is not only to be amerced, but his cause is to be dismissed.

Exception to the rule against recrimination.

11. An exception, however, is propounded to the rule against recrimination previously to the refutation of a charge.

X. "He, the person complained against, may recriminate in charges brought for abuse and assault."\*(a)

Explanation.

12. In prosecutions for abuse, whether verbal or personal, and in assaults, that is, attacks committed with poison or with offensive weapons and the like, recrimination being allowable, the person complained against may, without having refuted the charge brought against himself, recriminate his accuser.

Objection replied to.

13. But [should it be objected,] that in this instance it is equally impossible to hear the two allegations at once, because the recrimination involves another complaint; and that it is no answer, because it does not refute the first

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\* *Yājñyavalkya*, cited in the *Vivādatandava*, *Mādhaveya*, *Smṛitichandricā*, *Dipacalica*, and *Subodhini*, by *Vishwarūpa*, *Mitramisra*, and *Balambhatta*.

(a) X. R. and M. [The defendant] may bring a counter-plaint for abusive language, or personal trespass, or for acts of atrocious violence,

charge; the reply is, that the recrimination is not used for the sake of trying two different pleas, but for the sake of obtaining a mitigated, or averting a weighty punishment.

14.\* As if a person, being charged with having abused or assaulted another, should plead that the complainant was the first aggressor, a mitigation of punishment might be the consequence, as *Náreda* has said: "It is a settled rule, that the first aggressor is the chief delinquent. He also is a wrong doer who attacks in the second instance, but the punishment of the first party will be more severe."† But where the parties simultaneously aggress, there is no difference in the punishment, as appears from the following text: "If there can be no distinction found between the parties, and the abuse, assault, and violence be simultaneous on the part of both, the punishment of both is to be the same."‡

Example.

15. Although it is impossible to try both allegations at once, yet in charges of assault, &c. recrimination is pertinent; but in actions for debt and the like, it is vain. Having thus propounded the law with respect to the parties, he proceeds to declare the duties of the judges and assessors.

Recapitulation.

## SECTION II.

### *Of Mesne Process.*

XA. "A competent surety must be taken from both parties for the satisfaction of the award."§ (a)

Security to be taken for the satisfaction of the award.

\* This seems analogous to the plea of *son assault demesne*, in the English law; but from what has preceded, it would appear that the equitable doctrine of *set off*, was not recognized in the Hindu code.

† Cited in the *Vivadatandava*, *Mádhaveya*, *Smritichandricá*, and *Veeramitrodaya*.

‡ *Dundaviveca*, *Smritichandricá* and *Veeramitrodaya*.

§ *Yājñavalkya*, cited in the *Vyavahāramayūcā*, *Subodhini*, *Vivadatandava*, *Dipacalica*; and by *Vishwarūpa*, *Mitramisra*, *Balanbhatta*.

(a) XA. R. and M. On behalf of each party, a surety, competent to meet the result of the suit, shall be bound.



1. "Both parties," that is, plaintiff and defendant. "A competent surety," one who stands in the same relation to the affair. A representative must be taken from both parties, from the plaintiff and defendant, "for the satisfaction of the award," for the delivery of the sum, or the fulfilment of the penalty adjudged in all proceedings by the judges and assessors.

In default of security, the parties to be guarded.

2. If this be not practicable, persons must be appointed to guard the parties, who are to provide their daily subsistence, as has been declared by *Catyáyana*: "If a party is unable to furnish a competent surety, he is to be guarded, and at the close of each day is to furnish wages for the service of his guards."\* Thus the rule for taking security from the litigant parties has been declared, and it remains to show the object of this measure.

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### SECTION III.

#### *Judgment in Actions for Debt.*

What judgment to be given against defendant, being cast.

XI. "In the case of a denial, when the claimant proves his allegation, the defendant, being cast, is to pay the amount, and an equal amount to the king. A person bringing a false claim is to discharge twice the amount of his claim."† (a)

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\* Cited in the *Vyavakáramayúc'ha*, *Vivádatandava*, *Veeramitrodaya*, *Dipacalica*, and *Mádhaveeya*.

† *Yájnyavalkya*, cited in the *Vivádatandava*, *Veeramitrodaya*, *Smṛti-chandricá*, *Dipacalica*, and *Subodhini*, and by *Vishwarūpa*, *Mitramisra*, *Balambhatta*.

(a) XI. R. and M. One against whom, after [a plea of] denial, judgment is given, shall pay the amount [adjudged to the plaintiff] together with an equal sum to the monarch. One who has made a false complaint, shall forfeit double the amount of his claim.

1. A denial of the claim alleged by the plaintiff being made by the defendant, and he being cast, or compelled to submission by the witnesses or other evidence, shall pay the amount claimed to the plaintiff, and to the king an equivalent fine as a mulct.

2. But if the plaintiff cannot establish his claim, he becomes the false claimant, and hence he is to pay to the king a fine equal to twice the amount claimed, and the same rule obtains in a plea of former judgment or special plea. In these instances, the plaintiff concealing the fact, and being overcome by the defendant, shall pay a fine to the king equivalent to twice the amount obtained; but if the defendant cannot establish his former judgment and special plea, then he is the false claimant, and being overcome by the plaintiff, is to pay to the king a fine equal to double the amount claimed, and the amount claimed to the plaintiff. In a case of confession, there is no fine.

What judgment to be given against a plaintiff failing to establish his claim.

3. The text above quoted relates only to actions for debt, because the fines applicable to other cases have been propounded separately; and it is not applicable generally, because in cases where there is no property claimed, it could not apply; and although there is a special provision, "The debtor shall be caused to pay by the king,"\* &c. which also relates to actions for debt, yet that contains a distinction which will be hereafter treated of.

The text relates only to actions for debt.

4. Or the text quoted may be admitted to be applicable to all cases, and thus interpreted:—a denial of the allegation being made by the person against whom it is brought, and he being overcome by the evidence adduced by the complainant, shall pay a fine proportionate to the several causes

Or it may be interpreted as extending to other cases.

\* *Yājñavalkya*, cited in the *Dipacalica*, *Vivādhakhaṇḍanava*, *Vivādharnavasetu*, *Mādhavēya*, and *Smṛitichandricā*.

of action. The connective particle may be used affirmatively, and the term "to the king" may be considered as a mere recital. If the complainant cannot prove his allegation, he becomes a false claimant, and shall pay a fine in money equivalent to twice the fine prescribed for each cause of action. In this instance, as in the former, the same rule obtains in cases of a plea of former judgment and special plea.

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#### SECTION IV.

##### *Special Rule respecting the Answer.*

Inference from  
a former text.

1. From the injunction, that the "claimant shall immediately reduce to writing the evidence of the thing to be proved,"\* it may be inferred, that in the delivery of the answer, some delay is permitted.

Exception.

2. But an exception has been laid down.

XII. "In a capital offence, theft, assault, and abuse, [where] a cow [is the cause of action,] slander, aggression, women; let him contest immediately;† otherwise, at option." (a)

Explanation of  
the text.

3. "*Capital offence*," which signifies an attack upon the person or the like, by means of poison or weapons. "*Theft*," petty larceny. "*Assault and abuse*," attack either on the person or character. Its nature will be subsequently explained. "*A cow*," a milch cow. "*Slander*," an accusation tend-

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\* *Yājñyavalkya*, cited in the *Dipacalica*, and by *Balambhatta*.

† Ibid.

(a) XII. R. and M. In a case of atrocious violence, of theft, of reviling or personal trespass, where a cow is the subject, or a [malicious] charge of crime, or an offence destructive of life or property, where a female [of the household] is the subject—[in each of these cases] the Court shall compel the parties to go to trial forthwith. In other cases, a day may be appointed at pleasure.

ing to loss of cast. "*Aggression*," an attempt either on life or property. This compound has its termination in the singular number, each of the terms composing it being singular.\* "*Women*," women of family, and slave girls. In the former case, character is involved; in the latter, property. "*Let him contest immediately*." The answer is to be immediately given, and no delay is to be allowed. "*Otherwise*:" in other actions, delay in delivering the answer has been declared optional with the parties, or with the assessors and judges.

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SECTION V.

*Indications of Falsehood.*

XIII. One who is constantly shifting his position, licks the corner of his lips, whose forehead sweats, and whose countenance continually changes colour. (a)

Indications of  
falsehood enumer-  
ated.

XIV. One whose mouth dries up, and who falters in his speech; who contradicts himself often; one who does not look up, or return an answer; who bites his lips (b)

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\* When two or more words come together, each in the same case, and which, in the usual mode of construction, would be separated by a conjunction equivalent to "and," they may be formed into a compound of the third species called *Dwundwa*. There are two modes of forming compounds of this species. In the first mode the compound is considered as many, and the last word is therefore put in the dual or plural number; and in the second mode, the aggregate is considered as one, and the last member is, consequently, put in the singular number and neuter gender. Wilkin's Grammar, 569. The passage in the text is an example of the latter species of compound.

(a) XIII. R. and M. One who moves from place to place, who licks the corners of his mouth, whose forehead sweats, and whose countenance changes colour.

(b) XIV. R. and M. Who with words from a<sup>o</sup> dry throat, stammering, says much that is contradictory, who makes no response to word or look, who contracts the lips —

XV. One who undergoes spontaneous changes, whether mental, verbal, corporeal, or actual; such a person, whether under a charge or giving evidence, is esteemed false.”\* (c)

Exposition of  
the text.

2. “*One who undergoes spontaneous changes or alterations,*” such as are not caused by fear or other passion; “*whether mental, verbal, corporeal, or actual, is esteemed false;*” whether under a charge or giving evidence.

Further explanation.

3. He then explains those changes particularly. “*Who is constantly shifting his position:*” who cannot remain in one place. “*Who licks the corner of his lips:*” who rubs the tip of his tongue about the extremities of his lips. These are actual changes.

Ditto.

4. “*Whose forehead sweats:*” Whose forehead is marked with drops of perspiration. “*Whose countenance continually changes colour:*” undergoes an alteration in colour from dark to pale. These are corporeal changes. “*One whose mouth dries up, and who falters in his speech:*” who hesitates, and hardly articulates in his speech. “*Who contradicts himself often:*” whose words are much at variance with each other. These are verbal changes. “*One who does not look up, or return an answer:*” one who does not give a direct answer, and who on being looked at does not look a man full in the face. This is a sign of a mental change. “*One who bites his lips:*” or who contorts them. This also is a corporeal change.†

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\* *Yājñavalkya*, cited in the *Subodhini*, and by *Dipacalica*, *Aparaditya*, *Mitramisra*, *Balambhatta*, *Vishwarūpa*.

(c) XV. R. and M. Who-soever [in this wise] changes his natural manner, in the action of his mind, of his speech, and of his person, is to be set down as false in his complaint, or [if a witness] in his testimony.

† The manner and deportment of witnesses is very commonly a principal ground of assent to or dissent from their testimony, and is doubtless a

5. These are declared to establish merely a probability of falsehood : not a certainty, from the difficulty of distinguishing between changes which have a cause, and those which are spontaneous. Should any intelligent man be able to explain the distinction, even this is not a cause of failure. As people do not perform funeral ceremonies on the appearance of the probability of a person's dying : so, in these instances, although it should appear probable that a person will be defeated, still it is not the proximate cause of defeat.

Those symptoms, not certain or fatal to the case.

6. Moreover.

XVI. "One who on his own authority decides a doubtful cause, one who flies, and one who being summoned stands mute, is to be cast and amerced."\* (a)

Cases of non-suit and fine.

6a. *One who on his own authority*, without having recourse to proof : *decides*, by duress or other means, *a doubtful cause* : one in which the claim is denied by the debtor, shall be cast and fined. Being sued after having confessed the claim, or after its being proved against him, *one who flies* or absconds, and being sued and *summoned* by the king, *one who stands mute* in the assembly, are also to be cast and amerced.

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very rational indication of the existence or want of sincerity. That the disposition of the witness will have an influence on his manner is undisputed ; the adequate observation of it is, however, a matter requiring the most skillful and judicious discernment ; the detection of affected plausibility, and the assistance of constitutional timidity, are objects which respectively import, in an eminent degree, the administration of justice. Appendix to Pothier, p. 256. And in a subsequent place, a passage from Lavater connected with this subject having been quoted, a citation from Halhed's Code of Gentoo Laws is given, descriptive of symptoms similar to those mentioned in the text.

\* *Yājñavalkya*, cited in the *Dipacāṭika* and *Subodhini*, and by *Vishwarūpa*, *Balambhatta*, *Aparāditya* and *Mitramisra*.

(a) XVI. R. and M. One who enforces by his own arbitrary act a claim which is denied, who absconds, or who does not respond when called—[each of these] is considered to have failed, and is amenable to punishment.

Explained.

7. "*Whether under a charge or giving evidence, is esteemed false.*" From this text, it might be inferred that a mere ascertainment of probable defeat was intended. The word "*amerced*" has been used to preclude that supposition. The word "*cast*", has been used to obviate the supposition, that such person is only to be amerced, but that he does not incur the forfeiture of his claim.\*

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## SECTION VI.

### *Of Conflicting Claims.*

Case of conflicting claims.

1. When two claimants come into court, and simultaneously prefer a claim : as if one person having obtained a field by gift, and enjoyed it for some time, and then on an emergency goes with his family to another part of the country ; and another individual, having obtained the same field by gift, and enjoyed it for some time, goes abroad, and afterwards both of them returning, come into court simultaneously, each claiming the field : in such a case, which of them is to proceed ? In answer to that, it is stated :

Who is to proceed.

XVII. "Both having witnesses, the witnesses of the first claimant are to be adduced. But the first claim being rejected, they will be those of the second claimant."† (a)

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\* In a former verse, Chap. ii. Section 1, §§ 9, there was a provision against the forfeiture of the claim in certain cases. The provision for it here is introduced, to shew that such consequence follows in some instances.

† *Kājnyawalkya*, cited by *Vishwarūpa*, *Balambhatta*, and *Mitramisra*, and in the *Subodhini*, *Dipacalica*, *Vivādatandava*, *Vyavahārachintāmāni* and *Smṛitīsāra*.

(a) XVII. R. and M. Where there are [rival claims, and] witnesses on both sides, the witnesses of him who asserts the elder title, are to be [first] examined : if that title be admitted, then the witnesses of him who claims by subsequent title [shall be examined].

2. "*Both*:" Both claimants having witnesses, the witnesses of the first claimant are to be examined. By the first claimant is meant, not the man who makes the first claim, but the person who claims the first gift and occupancy.

3. But if the adverse party should admit the assertion, saying, that it is true, but that his adversary sold the field to the king, who gave it to him, or that he had received it as a gift from another, to whom it had been given by his adversary, then from the incapacity of the first claimant to offer proof, his claim being rejected, the witnesses of the second claimant are to be examined. The witnesses of the person who claims the second acquisition and occupancy are in this case to be examined. This is the most correct interpretation.

Exception.

4. It is wrong here to apply the rule, that in case of a denial, the witnesses of the plaintiff, and in the case of a plea of former judgment or special plea, the first claim being rejected, the witnesses on the part of the defendant must be examined.

General rule  
not applicable in  
this instance.

5. That has been already declared in this, "The claimant shall immediately reduce to writing the evidence of the thing to be proved,"\* and in the subsequent texts; and there would be a repetition, if such were the meaning. The distinction has been clearly laid down by *Nārada* in the following texts: "In a denial, the plaintiff is to adduce the evidence: in a special plea, the defendant: and in a plea of former judgment, it is only necessary to produce the decree."† Having recited this text, he proceeds: "Where there are two claimants to one cause of action, and each has witnesses, those of the prior claimant are to be examined."‡ This

Argument in  
support of the  
above opinion.

\* See Chapter ii. Section 3, verse 1.

† Cited in the *Vyavahārachintāmani*, but *Calpyiyana* in the *Smṛitichandricā*.

‡ Cited in the *Vivādatandava*, *Vyavahārachintāmani*, and *Smṛitisāra*.



case being distinct from all others, has been provided for specially.

## SECTION VII.

### *Of an Action attended by Wager.\**

A wagering party being cast, must make good the fine and wager, besides the claim:

XVIII. "If the claim be attended by wager, the losing party is to be compelled to pay a fine, his wager, and the thing claimed to the plaintiff."† (a)

1. If the claim or judicial proceeding be a wagering one, or joined with a wager or stake, then the party who loses, or is cast in such wagering cause, shall be compelled by the king to pay the fine specified, and the wager made by himself, to the king, and to the plaintiff the property forming the subject of the claim.

Wager may be by one party only.

2. Where any person, influenced by vehemence, engages in the event of his being cast, to pay a hundred *panas*, and his adversary does not engage at all, there also the cause may be proceeded on.

In which case he alone is responsible for it.

3. Should the event of that cause prove the wagering party to be cast, he shall be made to discharge his wager, together with a fine. But should the other party be cast, he is only to pay the fine, but not the wager; because the distinction has been observed of the wager made by the party himself.

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\* This is not exactly the wager of English law; being in fact nothing more than a simple bet on the part of the litigant using it, that he obtains judgment on his side.

† *Yājñawalkya*, cited in the *Subodhini* and *Dipacalica*, and by *Aparāditya*, *Mitrāmisra*, *Balambhatta*, and *Vishwarūpa*.

(a) XVIII. R. and M. Should the suit be accompanied by a wager, [the Court] shall compel the losing party to pay the fine [prescribed], as well as his wager and his debt to the creditor,

4. So, where one party wagers a hundred, and the other fifty; in the event of loss, each party is to discharge his own wager. From the condition expressed, "If the claim be a wagering one," it follows that it may be without wager.

Each party responsible for his own wager.

## SECTION VIII.

### *Special Rules of Proceeding.*

XIX. "The king shall investigate judicial proceedings in a *bonâ fide* manner, rejecting ambiguity (*C'hala*);\* but should the truth not be established according to judicial form, failure ensues."† (a)

Trial to be *bonâ fide*.

2. Neglecting or casting aside *ambiguity*, or what may have been stated unintentionally, *the king shall investigate or try judicial proceedings in a bonâ fide manner*, according to the real circumstances of the case; and if the facts as they exist in reality be not established or proved according to judicial form, failure ensues, or defeat is the consequence. Therefore it is necessary to proceed according to the real circumstances of the case.

Parties must be urged to declare the real facts.

3. It becomes the judge and assessors to use all means, gentle and other, to induce the parties to declare the truth; in which case a decision may be passed without having re-

By the judges and assessors.

\* Fraud (*C'hala*), or perversion and misconstruction, is of three sorts: 1st, verbal misconstruing of what is ambiguous; 2nd, perverting in a literal sense what is said in a metaphorical one; 3rd, generalizing what is particular. — H. T. Colebrooke, on the *Philosophy of the Hindus*, Trans. R. A. S., vol. i., p. 117.

† *Yājñyavalkya*, cited in the *Subodhini* and *Dipacalica*, *Vishwarūpa*, *Balambhatta*, *Aparaditya*, and *Mitramisra*.

(a) XIX. R. and M. Let the monarch, rejecting subtleties, conduct the trial of suits upon the merits: even merits, in the absence of proof, must fail of success in the suit.

course to witnesses or other evidence. But as it is impossible in every case to decide agreeably to reality, a decision must be made according to the witnesses or other evidence : this is the alternative.

Two methods of deciding certain and uncertain.

4. As has been declared : "Two methods have been propounded, the one certain, the other uncertain. Certain, is where the real facts of the case are represented ; uncertain, is where the facts are doubtfully stated."\* A proceeding carried on in the certain mode is the primary one, but the uncertain mode is secondary, because a decision passed on the faith of written proof and witnesses may be sometimes correct and sometimes otherwise, for witnesses and other evidence may be false.

5. "Should the truth not be established according to judicial form, failure ensues." An example is now given of this latter part of the text.

Proof of a part, when the whole claim is denied, is proof of the whole.

XX. "In a denial of more than one written claim, if confuted in a part, he shall be made to pay by the king the whole amount of the claim ; but that which has not been represented should not be received."†(a)

Explanation.

6. In a written allegation, comprising more than one, or several claims for gold, silver and cloths, for instance, should the defendant deny or disallow the whole : if confuted, or forced to an admission by witnesses or other evidence in a

\* *Yājñawalkya*, cited by *Aparāditya*, *Balambhatta*, and in the *Vivādatandava*.

† *Yājñawalkya*, cited by *Balambhatta*, *Bishwarūpa*, *Mitrāmīśra*, *Aparāditya*, and *Sulapāni*.

(a.) XX. R. and M. If one plead a denial to a representation including several matters, and one part be proved against him, the monarch shall compel him to pay the whole amount claimed : but what has not been previously declared [by the plaintiff] is inadmissible.

part of the claim, the gold, for instance, the king shall cause him to make good to the plaintiff the whole, comprising the silver and the other articles specified. But "that which has not been represented should not be received:" that thing which has not been mentioned at the time of making the first representation must not be received; as if the plaintiff should assert that he had forgotten a certain article, his assertion must not be received or attended to by the king.

7. This is not merely an express precept; because the defendant is proved to have been false in one instance, and therefore it is presumable that he is false in another; and because the plaintiff is proved to have been true in one instance, and therefore it is presumable that he is true in another. The text of the contemplative sage is thus associated with the result of inference, or in other words, probability.

Rule not merely express, but deducible from reasoning.

8. A decision being passed according to reasoning and express law, should it not be conformable to the real merits of the case, the judicial officers are not blameable, as *Goutama* has declared: "Inference is the mode of discovering the truth: relying on that, therefore, let a conclusion be formed." He then proceeds to declare, "that the king and his officers are exonerated from blame" [in such cases.]\*

A decision founded on inference being erroneous, no blame attaches.

9. This rule respecting a person who has been confuted in part, must not be interpreted simply to imply the rejection of the defendant's statement; because it expressly declares, that the king shall cause a person who is confuted in part to make good the whole.

Erroneous supposition noticed.

10. *Catyáyana* says: "In an action comprising many claims, the creditor shall recover that property only to which

Text of *Catyáyana* has a special meaning.

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\* Cited in the *Vivadatandava*.

he can establish his claim by witnesses or other evidence.”\* This text relates to the discharge, by the son or other heirs, of debts contracted by the father or ancestor.

To which the above rule does not apply.

11. In this instance, if several claims be preferred against a son or other heir, and he plead ignorance, he is not a denying party; and if confuted in part, he does not incur the imputation of falsehood. Hence, the text concerning a denial in the case of several written claims, does not here apply, from the absence of denial, and the consequent absence of the required inference.

*Catyáyana's* text refers to a plea of ignorance.

12. Therefore the latter text of *Catyáyana* must be considered generally operative in a plea of ignorance, exclusive of the particular ordinance concerning a denial.

Should the evidence prove more or less than the claim, recourse may be had to other proof.

13. “In all actions for debt, and other actions, approaching to certainty,† if more or less be proved, the claim is not fully established.”‡ This is declared by *Catyáyana*: which means, that a part only of the claim, or more than the claim being proved, by testimony or other means, the whole is not thereby established. Should this text be adduced in opposition, and should it be argued, that the proof of one part of the claim cannot in any case establish that part which is not proved, the answer is, that although the meaning of the text is, that by reason of the necessity of proving the whole claim, the proof of a part or of more by the witnesses adduced does not establish the whole which is to be proved, still from the use of the terms “*not fully established*,” the

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\* Cited in the *Vivadatandava*. And in the *Vyavahárachintámáni* and *Vivádarnavasetu*.

† “*Sthirapryeshoo*, approaching to certainty.” Proof in a case of seduction or the like is dependant on evidence, &c., resting on tokens or other weak grounds; therefore, in such cases there is uncertainty. But in cases of debt and the like, the proof dependant on evidence resting on strong grounds, these cases are approaching to certainty.—*Subhodhini*.

‡ Cited in the *Feeramtrodaya*, *Smritichandricá*, and *Vivadatandava*.

meaning is, that a doubt remains, and that recourse must be had to other proof. This also is warranted by the text, "rejecting ambiguity."\*

14. But in criminal prosecutions, if part of the charge be proved by witnesses adduced to establish the whole charge, in this case the whole charge is proved, because this alone is sufficient proof in such prosecutions, as appears from the following text of *Catya'yana* : "In cases of adultery and theft, the whole charge is proved, should the witnesses adduced depose to the truth of any part of it."†

In criminal prosecutions, proof of a part is sufficient for the whole.

15. But [should it be objected], that "In a denial of more than one written claim," &c. is one sacred text, and "In an action comprising many claims," &c. is another sacred text;—that here no authority can attach to either, from their opposition to each other, and their being mutually conflicting; and that they cannot be reconciled by applying them to different subjects;—it is answered, that

Disquisition as to the mode of proceeding when two sacred texts differ.

XXI. "When two sacred texts oppose each other, that which is most applicable has most weight."‡(a)

15a. Where two sacred texts contradict each other, the contradiction must be rejected by referring them severally; and that which is applicable, by general or particular inference or otherwise,|| has most weight or authority. Should it be asked how this applicability is to be made apparent; it is answered,

\* Section 2, §§ 1.

† Cited in the *Veeramitrodaya*, *Smritichandricā*, and *Vivādarṇavasetu*.

‡ *Yājñavalkya*, quoted by *Sulapani*, *Balambhatta*, &c.

(a) XXI. R. and M. If two texts of the Law be opposed to each other, an argument founded on usage is of force.

|| "*Ootsurgapubadade*, *lukṣhuna*, by general or particular inference." The exception supersedes the general rule; and this is the method of construing the universal and special rules: "or otherwise," applicable or not so, by reason of its being appropriate or the reverse to the subject matter.—*Subodhini*,

by experience, by ancient experience, showing the relation between cause and effect.\*

To be referred  
severally.

16. Moreover, in the instance in question, it is proper to apply the rules severally, and in all instances, it is optional to refer rules according to their applicability to particular cases.

17. A special exception is propounded to the general rule respecting conflicting authorities.

XXIA. "It is a fixed rule, that the sacred code is of greater authority than the rule of ethics."†(a)

Exception in  
favour of the sa-  
cred code.

17a. Ethical codes, such as those compiled by *Usanasa* and others, indeed, having been already excluded by the text "conformably to the sacred code of laws,"‡ it follows that the ethical rules here meant are those which treat of the duty of kings, and are included in the sacred code. Where the sacred and ethical codes are at variance, the former is more authoritative than the latter: this is the established rule or definition.

Superiority of  
the sacred to the  
ethical code.

18. Although there is no essential discrepancy between the sacred and ethical codes, owing to their conjoint operation; yet, from the superiority of the subject of religious duty, and the inferiority of the moral code, the sacred code is of greater authority: this is the meaning. The superiority of

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\* In logic, *Anwaya* and *Vyatireka*: the first is the relation of events, of which whenever one occurs, the other also occurs; the second is the connexion of circumstances, of which when one occurs not, the other also does not occur.  
—*Note to Dig.*, vol. i., p. 9.

† *Yājñavalkya*, quoted by *Sulapani*, *Balambhatta*, &c.

(a) XXIA. R. and M.<sup>c</sup> But the *Dharma Śāstra* is of greater force than the *Artha Śāstra*. This is a settled rule.

‡ Chap. I., p. 1, §§ 2.

spiritual matters has been exhibited in the commencement of the work.\* Therefore, when the sacred and ethical codes oppose each other, the latter must give way, and it is not optional to refer them severally.

19. What is the example? "A man may unhesitatingly kill a spiritual teacher, or a child, or an old man, or a learned priest, coming with an hostile intent."† There is no guilt at all imputable to the slayer of a person coming with an hostile intent, whether overt or concealed; for wrath meets wrath.‡ "Let a man in battle strive to destroy a person coming with an hostile intent, even though he may have studied the whole *Vedānta*: by such an act he does not become the murderer of a Brahmin."§ These are specimens of moral rules. "Having slain a Brahmin unwittingly, such is the prescribed expiation; but there is no expiation permitted to one who wilfully kills a Brahmin."¶ These and others are texts of the sacred code. But these extracts should not be quoted as conflicting instances of the sacred and ethical codes, where the former should be held to prevail over the latter.

Certain texts though apparently at variance, not examples of the above rule.

20. For as these two do not apply to the same subject, there is no opposition, and consequently no room to assign relative superiority. "A man may unhesitatingly kill a spiritual teacher, or a child, or an old man," &c. These and the other texts have been merely recited in corroboration of the following texts, commencing, "A Brahmin may take up

Because the ethical rules are corroborative merely of the sacred text.

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\* In the first chapter of religious duties and ceremonies.

† *Menu* and *Vishnu* in the *Vivādarṇavasetu*; but uncertain in the *Veera-mitrodaya*.

‡ Uncertain in the *Veera-mitrodaya*; but *Cullucabhatta* says, it is the text of *Menu*.

§ *Catyāyana* in the *Vivādarṇavasetu* and *Veera-mitrodaya*.

¶ *Menu*, cited by *Cullucabhatta*, &c.



arms in defence of religion." "In self-defence, and in defence of sacrificial apparatus, in war, and in guarding Brahmins or women, one who lawfully kills another is not culpable."\* In defence of one-self, in defence of sacrificial apparatus, or articles requisite to the performance of sacrificial ceremonies, in battle, one who slays another lawfully with sharp weapons, who slays a person coming with an hostile intent against women or Brahmins, is not punishable.

Text relating to the killing of a Brahmin not to be construed literally.

21. A person may slay a spiritual teacher or others whose persons are exceeding sacred, if they come with an hostile intent. *A fortiori* others. From the occurrence of the word "*or*," in the preceding text, and the word "*even*" in a former one prefixed to "though he may have studied the whole *Vedānta*," it is not intended positively to assert that spiritual teachers and the like may be slain.† This meaning also may be gathered from the text of *Soomuntoo*. "There is no crime in killing any one coming with a hostile intent, except a cow and a Brahmin;" and from the text of *Menu*; "A man must not slay a spiritual teacher, an expounder of science, a father or mother, Brahmins, or cows; all these are sacred.‡

But as making an exception in their cases.

22. The text, by applying it to the prohibition of slaying spiritual teachers, and the like, coming with an hostile intent,

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\* *Menu*, cited by *Cullucabhatta*, &c.

† The whole of this disquisition is rather obscure. The meaning seems to be this. It was declared that where the provisions of the sacred and ethical codes oppose each other, those of the former are to be adopted to the exclusion of the latter; but it is the object of the author to prove that, in the instances cited, although there is an apparent variance, they are really not inconsistent; that they may both stand, if not construed literally; that the provisions of the ethical code, in these instances, should be considered in an hyperbolical sense, and that the authority to slay wilfully, a Brahmin coming with an hostile intent, is not meant to be taken in its literal sense, but is used as an argument, *a fortiori*, to prove the permission of slaying other hostile aggressors.

‡ *Menu*, cited by *Cullucabhatta*, &c.

is rendered pertinent, but not otherwise, as the prohibition to destroy is conveyed generally in the Shasters : " There is no crime in killing any one coming with an hostile intent," &c. This text also relates to other than Brahmins and the like.

23. For, "an incendiary, one who administers poison, one attacking with a murderous weapon, a robber, one who usurps the land, and one who carries off the wife of another, these six are denominated hostile aggressors."\* One intent on destroying by sword, poison, or fire, one who has lifted up his hand in imprecation, one who destroys by means of incantations,† a spy upon the king, an adulterer, a seeker out of blemishes; these and others of the like description are to be considered hostile aggressors. Such is the general definition of an hostile aggressor.

General definition of hostile aggressors.

24. But Brahmins and the like, being hostile aggressors, may be opposed by a person not meditating their destruction, but for the sake of his own preservation. Should they be destroyed unintentionally, a slight expiation must be performed, but the king does not award any punishment. This, then, being the conclusion, it becomes necessary to adduce another text as the example [of opposition between the sacred and ethical codes.]

Brahmins and other sacred persons, must in no case be wilfully slain.

25. It is now declared : " The acquisition of a friend is more desirable than the acquisition of gold and land. Therefore a man must strenuously endeavour to obtain that.‡" This is a rule of ethics. But the sacred code declares, that

Texts exemplifying the above rule.

\* Cited in the *Veeramitrodaya*, *Vivādarṇavasetu*, *Dipacālica*.

† The original has it " by means of the *Athurvaveda*." The *Athurvaveda*, as is well known, contains many forms of imprecation for the destruction of enemies.—*Ward on the Hindus*, vol. i., p. 238.

‡ Uncertain in the *Veeramitrodaya*.

“the king, divested of anger and avarice,” &c\*. In these two instances there exists some contradiction : for instance, in a regular judicial proceeding, the acquisition of a friend would be accomplished by prejudging the success of one party ; but this would not be conformable to the sacred code, in conformity to which, the success of either party not being prejudged, the acquisition of a friend will be defeated.

Penance  
preferring  
ethical code.

for  
the

26. Here then the sacred code is more authoritative than the ethical code ; and *Apastamba* has propounded a heavy penance, where ethical and sacred rules interfere with each other, for the person who inclines to the ethical. The penance endures twelve years.

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\* Chap. i., Sec. 1, §§ 2.

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## CHAPTER III.

### OF THE GENERAL NATURE OF EVIDENCE.

#### SECTION I.

1. It has been said: "The claimant shall immediately reduce to writing the evidence of the thing to be proved;" but in anticipation of the question, what is the nature of that evidence?— Text cited.

XXII. "Evidence is said to consist of written proof, possession, and witnesses. In the absence of all these, one of the divine tests is prescribed."\* (a) Four sorts of evidence.

3. Evidence is that by which a matter is established or decided. This is two-fold, human and divine: human evidence is three-fold, writings, possession, and witnesses. Such is the opinion of eminent sages. Writings are of two sorts, official and private. The official sort has already been defined;† the private will be treated of hereafter. Possession implies enjoyment. Witnesses will be treated of hereafter. Further division of evidence.

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\* *Yājñyavalkya*, cited in the *Veeramitrodya*, *Vyavahārachintāmani*, *Vicādatandava*, *Vyavahāramayū'ha*.

(a) XXII. R. and M. Legal proofs are described as, writing, possession, and witnesses. In the absence of either of those, it is ordained, that some one of the ordeals is [to be resorted to.]

† In the first chapter, treating of religious duties and ceremonies, by the following texts of *Yājñyavalkya*:—"Let a king, having given land or assigned a corrody, cause his gift to be written for the information of good princes who will succeed him." "Either on prepared sills, or on a plate of copper, sealed with his own signet. Having described his ancestors and himself,"—  
*Subodhini*.

Objection against  
evidence of possession  
replied to.

4. Should it be admitted, that writings and witnesses, from their being expressed by language, and from their being comprehended in sound,\* may be evidence, but at the same time contended, that possession cannot be evidence, [from the absence of this capacity,] it is answered, that possession is proof, when joined to certain qualities : because purchase or other proximate cause of proprietary right may be inferred from conformity,† or deduced from presumption ; ‡ and therefore possession is proof, either by inference, or by reason of its not having any independent existence.

In default of  
other evidence, a  
divine test to be  
resorted to.

5. In default of writings and the other two descriptions of evidence, a divine test, the nature and distinctions of which will be treated of hereafter, is propounded as another species of evidence to be resorted to, with due attention to tribe, place, and time. This fact is ascertained from the text above cited : “ In the absence of all these, a divine test is prescribed :”|| and also from the nature of a divine test, and of its proof having been declared in the scriptures. ¶

\* To the due understanding of this, it is necessary to explain, that according to the *Mimāṃsā* philosophy, there are three modes of proof : *Pratyukshu*, or the evidence of the senses ; *Unnoomanu*, or the evidence from inference : and *Shubdu*, or the evidence from sound.

† *Arghubhicharu*, or conformity, is a term of logic. “ In *Hetwabhasa*, there are five divisions, viz., *Suryubhicharu*, *Viroodhu*, *Sutprutipukshu*, *Udhecc*, and *Vadhu*. The assignment of a plausible, though false reason to establish a proposition, is called *Hetwabhasa*. Agreement as well as disagreement in locality between the cause and the effect, is *Suryubhicharu*.”—*Ward*, vol. i., p. 409.

‡ *Arthapati*. This is a mode of reasoning peculiar to the *Mimāṃsā* school of philosophy. Mr. Colebrooke on the Philosophy of the Hindus, observes “ Presumption, *Arthapati*, is deduction of a matter from that which could not else be. It is the assumption of a thing not itself perceived, but necessarily implied by another which is seen, heard, or proved.”—*Trans. R. A. S.*, p. 445.

|| See *supra*, § 2.

¶ Having been declared in the scriptures. Where there is any visible proof,

6. But when two claimants come simultaneously into court, the one relying on human evidence, the other on a divine test, he who relies on human evidence is to be first heard, as appears from the text of *Cat'yáyana* : " When one adduces human evidence, and the other appeals to a divine test, the king will in this instance proceed to examine the human evidence, and will not have recourse to the divine test."\*

Human evidence is preferable to a divine test

7. Moreover, where there is human evidence to establish the principal part of a claim, there also recourse must not be had to a divine test : as in the case of a denial of a claim for a debt of one hundred pieces of silver borrowed, with interest, should there be witnesses to prove the delivery, but not the amount of it, or the rate of the interest specified, and the claimant should offer to prove these facts by a divine test, here also, conformably to the rule, " In a denial of more than one written claim," &c., a divine test cannot be had recourse to, for the purpose of establishing either the amount of the debt, or the specified interest.

The principal part of a claim being proved by human evidence, recourse should not be had to a divine test.

8. This has been declared by *Cat'yáyana* : " Where human evidence is applicable to even only one part of the case, that is to be received in preference, and recourse must not be had to the evidence of those willing to establish the whole case by divine test."†

The same rule declared by *Cat'yáyana*.

it is improper to have recourse to that which is unseen : and as the nature of the divine test as proof, is contained only in the scriptures, and it is not palpable to the understanding of the world, so long as there is visible proof, invisible evidence should not be resorted to.—*Subodhini*.

\* Cited in the *Veeramitrodaya*, *Vyavahārachintāmani*, *Vivādatandava*, *Smṛitichandricā*, *Vyavahāramadhava*, but *Nāreda* in the *Smṛitichintāmani* and *Vyavahāramayūc'ha*.

† Cited in the *Veeramitrodaya*, *Vyavahāramayūc'ha*, *Vivādatandava*, and *Smṛitichandricā*.

Divine test to be resorted to only in default of human evidence.

9. But if there be any text ordaining that a divine test must be resorted to in the trial of secret offences, still that applies only to cases where there is no human evidence : and although *Náreda* has propounded the following rule, " In the case of an aggression committed in a desert, in an uninhabited place, at night, or in the interior of a dwelling, and in the case of a denial of a deposit, divine test must be resorted to,"\* this also is applicable only in default of human evidence. This is the general fixed rule : an exception to it will subsequently be shown.

Exception.

10. " In the investigation of aggressions, or assault and abuse, and in all cases attended with violence committed long ago, the witnesses must be subjected to a divine test."†

Proof of custom depends on writings.

11. Next are propounded certain rules regarding writings and other evidence. " The proof of established custom, among assemblies of townsmen (*puga*), companies of traders (*sreni*), or conventions of different trades (*gunna*), depends on documentary evidence. There neither divine test nor witnesses are available."‡

In other cases, possession is proof.

12. " So also in a case relating to the right of a pathway or road, and in a case of a watercourse, possession affords the weightiest proof. There neither divine test nor witnesses are available."||

In other cases, witnesses.

13. " In cases relating to the payment or non-payment of wages being between master and servant, to the non-payment for an article purchased, or when a dispute arises concerning

\* Cited in the *Vivádatandava* and *Veeramitrodaya*.

† *Vrihaspati*, cited in the *Vivádatandava* but *Catyáyana* in the *Veeramitrodaya*, *Smritichandrica*, and *Vyavahárachintámani*.

‡ Ibid.

|| *Catyáyana*, cited in the *Veeramitrodaya*, *Vyavahárachintámani*, and *Smritichandrica*; but *Vrihaspati* in the *Vivádatandava*.

wagers laid at dice, or with sporting animals ; in all these cases the evidence of witnesses must be resorted to, and recourse must not be had to a divine test or to writings.\*

## SECTION II.

### *Of Relative Priority.*

1. In answer to the question proposed, to which of the two acts will the greater weight attach, when each party adduces evidence undistinguishable in point of preference, the one asserting a prior, and the other a posterior claim ? it is declared,

The posterior act is of most effect in certain cases.

XXIII. “ In all other matter, the latest act shall prevail.”† (a)

2. “ In suits for property generally :” in actions for debt, &c. “ The posterior act :” that which is last done, or the later transaction. The posterior act being established, he who asserts it succeeds ; and even though the prior act should be established, the assertor on that ground loses his claim.

Explanation.

3. Thus, if one party proves a loan by its delivery, and the other pleads that he owes nothing on account of repayment, here, in these two acts of delivery and repayment, both being established by evidence, the repayment is of the greater weight, and the party who pleads the repayment obtains judgment.

Example.

4. So also, if a person having borrowed one hundred pieces of money at one per cent., should at a subsequent

Additional example.

\* *Catnyana*, cited in the *Veeramilrodaya*, *Vyazaharachintamani*, and *Smritichandrica* ; but *Vrihaspati* in the *Vivadatanidhi*.

† *Rājnyawalaya*, cited in the *Vivadabhangamava*, *Vivadarnavasetu*, and *Dnyatutwa*.

(a) XXIII. R. and M. In all disputes where property is concerned, that last act is of greater force.



period agree to pay three per cent., and there being evidence to both engagements, that for three per cent. is of the greater weight; from its having occurred at a posterior date, and because, it would be inconsistent with the existence of the first. It has moreover been declared, "A posterior act not superseding a prior one, has no existence."

5. An exception to this rule has been propounded.\*

Exception in  
cases of mortgage,  
gift, and sale.

XXIII.A "But in the case of a pledge, a gift, or a sale, the prior contract has the greatest force."\* (a)

5a. In the three instances of mortgage, &c., the prior act is the more valid: as if a person having mortgaged a piece of land to one person for a valuable consideration, should subsequently mortgage the same piece of land to another for a valuable consideration, the right will be with the first mortgagee, and not with the second. So also in the cases of gift and sale.

Objection an-  
swered.

6: It should not be contended, that as what has been mortgaged to one person cannot be mortgaged to another, on account of the right of the original owner having been divested, and that as the gift or sale of things already given and sold is impracticable, therefore this rule is impertinent; because it is here intended to declare the prior act to be more valid in cases where a person, through delusion or avarice, makes a second mortgage, &c., where he has no right to do so. This rule, therefore, being pertinent, should not be impugned.

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\* *Yājñavalkya*, cited in the *Vivādabhāṅgarnava*, *Dayatātva*, *Vivādātā-  
dava*, but *Menu* in the *Vyavahārachintāmaṇi*.

(a) XXIII.A. P and M. Except in [cases of] pledge, gift, and sale, when the first act is of greater force,

## SECTION III.

*Of the Effect of Possession.*

1. Previously to shewing how possession is evidence, when coupled with certain qualities, he declares another effect of possession.

XXIV. "He who sees his land possessed by a stranger for twenty years, or his personal estate for ten years, without asserting his own right, loses his property in them."\* (a)

Effect of possession.

2. "By another :—" by a stranger. "Observes his land or moveable property enjoyed by another without interfering :—" does not prevent that other from enjoying it by a declaration that it is his own property : such twenty years' enjoyment, that is to say, twenty years' uninterrupted possession, will be the means of causing loss ; and in the case of moveable property, such as elephants and horses, in ten years.

Explanation.

3. But [it may be objected,] that this is inconsistent, as non-interruption cannot destroy proprietary right, non-interruption not having been recognized, either in practice or theory, like gift or sale, to cause a cessation of right, and that, therefore, proprietary right does not accrue from twenty years' possession, and that possession, being merely evidence of right, cannot create the thing to be proved ; and moreover, that it is not included among the causes of proprietary right, such as inheritance, &c., as detailed in the following text : "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is, for a *Brahmin*,

Objection urged to this interpretation.

\* *Yājñavalkya*, cited in the *Vivādatandava*, *Smṛitichandricā*, *Vyavahāramayūc'ha*, *Smṛitistāra*, *Vivādaḥhangarnava*.

(a) XXIV. R. and M. If one see his land in the possession of another and say nothing, it is lost after twenty years ; moveables after ten years.

an additional mode ; conquest for a *Cshetrya* ; gain for a *Vaisya* or *Sudra*.\* These eight *Goutama* has declared to be causes of right, but he has not enumerated possession. Therefore it is not right to affirm that twenty years' possession is a mode of creating proprietary right ; and as the causes of inferring right are facts of worldly concern, it is incorrect to infer them solely from a passage of scripture. This point will be amply discussed in the chapter treating of inheritance, but the text of *Goutama* is merely preceptive †

Additional reasons for the objection.

4. Moreover, " He who enjoys without a title, even for many hundred years, the ruler of the earth should inflict on that sinner the punishment of a thief."‡ To assert, therefore, that simple possession confers a right of property, would be making an assertion contrary to this text : and it should not be contended, that this last text, " He who enjoys without a title," &c., relates to concealed possession, and the first, namely, " He who sees his land possessed by a stranger for twenty years," &c., (§ 1.) refers to open possession, because the text, " He who enjoys without title," &c., has been propounded in both without distinction. *Cutyáyana* has propounded the same rule : " In the possession of cattle, male or female slaves, &c., there is no validity either for the [unlawful] taker or his son. This is the established rule : "|| and besides, loss cannot accrue from open possession, because it is not a cause of loss.

Argument continued.

5. It must not be supposed, that the exception in favour of the greater validity of a prior act with regard to mortgage, gift, and sale, is intended to imply the greater validity of

\* *Vicādatandava*.

† In other words, it merely enjoins the duties of the several tribes, and furnishes no proof that the modes of acquiring property are to be ascertained solely by reference to scriptural authority.

‡ *Nāreda*, cited in the *Vicādatandava*, *Smṛitichandricā*, *Vyavahāramayūc'ha*.

|| *Vicādashandricā*, *Vicādatandava*, *Vyavahāramayūc'ha*.

the posterior act in a case of this description, provided that in this instance of landed property there have been twenty, and in that of personal property ten years' possession, because in such acts (mortgages and the like), no subsequent transactions can really take effect. A person is entitled to mortgage, give, or sell his own property, but he has no proprietary right over things already mortgaged, given, or sold. A penalty is propounded for the gift and acceptance of a thing, where there is no ownership. "He who receives a thing which ought not to be given, and he who bestows it, both these are to be punished as thieves, and amerced in the highest penalty."\* If this verse were intended as an exception to the general rule in the three cases of mortgages, &c., then the exception propounded in a subsequent text beginning, "Except property connected with pledges, boundaries," &c.,† would be irrelevant. Hence it follows, that no loss can accrue on landed or other property.

6. Nor is the remedy lost. By *Nāreḍa*, a loss of remedy has been mentioned arising from privation (*abhava*) of cause of neglect, not from privation of the property. "The suit does not prosper after the expiration of the limited period, of a person practising indifference, and remaining silent."‡ So also has *Menu*: "If he be neither an idiot nor an infant under the full age of fifteen years, and if the chattel be adversely possessed in a place where he may see it, his property in it is extinct by law, and the adverse possessor shall keep it."§ The injury to the remedy is here intended, and not to the property. It happens when the posses-

Continuation of the argument. The text does not imply loss of remedy.

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\* See §§ 13.

† *Vivādatandava*, *Veeramitrodaya*.

‡ *Nāreḍa*, cited in the *Vivādatandava*, and in some copies of the *Mitāc-shara*.

§ *Menu*, 8, § 147, cited in the *Smṛitichandricā*, *Vivādatandava*.

sor replies with this plea : " The plaintiff is neither an idiot, nor a boy, nor a minor. In his presence I enjoyed the property for twenty years without interruption. Had I unjustly got possession of the property, why did he remain passive all the time? To the truth of this assertion I have many witnesses." In this instance the plaintiff will be unable to rejoin, but the suit of one not able to rejoin may be proceeded on, as appears from the text, " The king shall investigate judicial proceedings in a *bond fide* manner, rejecting ambiguity," &c.\* This is the correct interpretation.

Continuation of  
the argument.

7. It must not be supposed, that as neither the loss of the right nor of the remedy ensues, the text above quoted merely intends an injunction not to remain passive, as a person looking on and not interfering, might be in danger of losing his remedy; for had it been merely intended to convey an injunction against remaining passive, it would have been idle to define a period of twenty years, inasmuch as there is no reason to apprehend loss accruing on simple possession for any period within the memory of man. If it should be asserted, that the definite period of twenty years has been used to obviate any objection to the title deed of that time, according to the text of *Ātīyāyana* : " He who by virtue of any title deed enjoys the property of a competent person for twenty years, the title deed is incontrovertible after that period : "† that also is denied, as the capacity of obviating objections to title deeds does not apply even to cases of mortgages, boundaries, and the like, and as such [general construction] would nullify the exception of such cases, as declared in the following texts of *Ātīyāyana* :—  
" The ascertained enjoyment of a mortgage for twenty years in virtue of a title deed must be upheld, if such title deed is

Other constructions  
proposed and  
rejected.

\* *Yājñyavalkya*, cited in the *Smṛitichandricā*.

† *Vyavahāramādhava*, *Vivādatandava*.

unexceptionable. After the decision of a boundary dispute, a document defining the boundaries must be granted. Any errors which that contains must be excepted to in the course of twenty years ;"\* and the same rule applies to ten years' possession of personal property.

8. The meaning of the text must therefore be declared in a different manner, which is now done. The loss of the profits accruing from the real and personal property is here intended, not the loss of the remedy or of the right ; so that the meaning is, that although the rightful owner regains his field after twenty years' uninterrupted possession by another, yet he loses the intermediate profits. This interpretation is conformable to the express words of the text, and is inferrible from the fault of the owner in remaining passive.

Right interpretation of text pronounced. Loss of profits intended.

9. But if the possession had been in his absence, he regains the profits also, as appears from the condition "*him who observes ;*" and if the possession had fallen under his observation, but been contested, as appears from the condition "*without interfering ;*" so also, if the possession had been observed and not contested, but the term of twenty years had not expired, as appears from the words "*twenty.*"

Possession must be for twenty years observed, and uninterrupted.

10. It is true, that it may be considered improper to pronounce a loss of the accruing profits, because the right to them also exists ; but this can only apply where the profits remain essentially *in statu quo* : as for instance, in the case of betel-nut and bread-fruit plantations, if the fruit be forthcoming as well as the trees which yielded it. But where, from the consumption of the produce, there is an essential

Where the profits are forthcoming, they are to be restored.

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\* Vyākṛāṁśadhava, Vivādatandava.

destruction of the profits, there the right to it also is destroyed.\*

Punishment  
may be inflicted  
on the unlawful  
possessor, even  
after twenty  
years.

11. "He who enjoys without right for many hundred years, the rulers of the earth should inflict on that sinner the punishment of a thief."† From this text it may be inferred, that, as is the case in cases of theft, the estimated amount of the property (unduly appropriated) should be restored, were it not for the rule declaring loss after twenty years, which is an exception to that text. But even after twenty years, punishment is to be inflicted from the possession being unlawful, and because there is no exception to this part of the text.

Recapitulation.

12. Hence it is established, that from the fault of the owner consisting in his neglect, and from the express words of the text, after the expiration of twenty years he cannot recover the produce consumed; and the same rule applies to personal property enjoyed for ten years.

Exception

13. An exception to this rule is now propounded.

XXV. Except property (connected with) pledges, boundaries, deposits, and of idiots and minors, and except deposits, and the property of kings, women, and learned students."‡(a)

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\* This would seem to proceed on the apparently unjust principle of the civil law, which makes a distinction between the borrower for use, and the borrower for consumption, rendering the latter liable in a case where the former is not; by the rule that *obligatio extinguitur rei debite interitu*." But the Hindu legislator regards the ordinance rather as a rule of positive law, than as the dictate of unfettered equity; for he proceeds to state, that the estimated value should be restored were it not for the positive exception, which must be reconciled, so that it may not be superfluous.

† Vide *supra*, § 4.

‡ *Vivádatandava* and *Veeramitrodaga*.

(a) XXV. R. and M. Excepting pledges, boundary limits, deposits with

14. "*A pledge, and a boundary, and a sealed deposit.*" These being joined from the plural, pledges, boundaries, and sealed deposits. "*An idiot, and a minor.*" These terms being compounded form the dual number, idiots and minors : the property of these two, the property of idiots and minors : pledges, boundaries, sealed deposits, and the property of idiots and minors, except these descriptions of property, that is, pledges, boundaries, deposits, and the property of idiots and minors.\* A deposit is that which is committed to the care of another, with a description† of its quality or quantity, as has been declared by *Náreda* : "When a man bails any of his effects to another, in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a deposit, which the wise call *Nicshepa* : a deposit under seal is called *Upanidhhi*."‡

Explanation of the terms in the exception.

15. In mortgages of land for twenty, and pledges of personal property for ten years, no loss of profit accrues to one who observes the possession, and does not interfere, from the absence of any fault on the part of such person ; because in these instances there is a competent reason for neglect, inasmuch as in the case of mortgage, the very purpose of its being made is to confer possession, and therefore the blame of neglect does not attach.

Neglect not productive of loss of profits in mortgage, &c.

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specification, property of idiots and children, deposits without specification, property of the monarch, of women, and of those learned in the Vedas.

\* The disquisition here introduced is connected with grammatical principles, and the rules on which compounds are formed ; but there seems to be no occasion for entering minutely into the subject in this place.

† This also is the reading of the *Veeramitrodaya* ; but according to the *Subodhini*, the reading should be *Aprudurshanena*, "without a description ;" as in the opinion of *Visweswara*, where there is confidence, the precaution of counting and describing is needless. But the other reading of the text is most approved.

‡ *Vyavaháramayúcha*, *Veeramitrodaya*, and *Vivádarnavasctu*.



Nor in the case of boundaries, sealed and specified deposits.

16. In the case of boundaries, from their being easily ascertainable by ancient landmarks of chaff, ashes, or other articles, neglect may be permitted; and neglect may be allowed in the case of sealed and specified deposits, because there is a legal prohibition against the enjoyment of them, and if this prohibition be infringed, the profits must be restored with interest.

Nor in the case of idiots, and other exempted persons.

17. In the case of idiots and minors, neglect is excusable on account of their idiotism and minority, and in the case of a king, from the pressure of his multifarious occupations; in the case of women, from their ignorance and inexperience; and in the case of learned students, neglect is permitted from their being continually engaged in the duties of study and instruction, and learned disquisitions.

Recapitulation.

18. Hence it follows, that as in the case of pledges and the rest, as there is a method of accounting for neglect as to possession falling under observation, it can never be the cause of the loss of profits.

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#### SECTION IV.

##### *Digression concerning Fines and other Penalties.*

1. He next propounds the particular penalties in pledges and other cases.

Penalty of usurpation in cases of pledge, and other instances.

XXVI. "The king shall cause the usurper of pledges, &c., to restore the property to the rightful owner, and to pay a fine equivalent to the value of that property, or correspondent to his ability."\*(a)

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\* *Yājñawalkya*, cited in the *Vivādātandava*.

(a) XXVI. R. and M. One who appropriates a pledge, &c., shall be compelled to restore to the owner his property, and to pay a fine of equal value, or according to his means, to the monarch.

1a. In the case of mortgages and the rest, down to the case of the property of learned students, he who by virtue of long possession usurps, should be made to restore the property to the rightful owner. This is merely a repetition of a former text, and the rule respecting the payment of a fine equivalent to the value of property usurped, is a positive injunction.

2. Where, in the case of usurping lands, houses, &c., an equivalent fine may not be possible, reference must be made to the penalty hereafter propounded for a removal of landmarks and invasion of boundaries. If on account of the great wealth of the usurper, his arrogance would not be subdued by the payment of an equivalent fine, he must be amerced according to his ability. He must be made to pay so much as is sufficient to subdue his arrogance. "It has been declared, that a fine is levied for the purpose of correction, and by that the arrogant must be subdued." Hence it would appear, that the purpose of a fine is entirely penal. But where the offender has not property equivalent to that usurped, he must be amerced in such manner as may subject him to distress.

Cases in which the fine need not be equivalent to the property usurped.

3. Where a person is an absolute pauper, corrections must be accomplished by means of reprimand, corporal punishment, &c. So says *Menu*: "First, let him punish by gentle admonition; afterwards, by harsh reproof; thirdly, by deprivation of property; after that, by corporal pain."\*

Penalty to be inflicted on an offending pauper.

4. Corporal punishment, or that which is inflicted on the person, is declared to be ten-fold, and to apply to all but Brahmins, as *Menu* has declared: "*Menu*, son of the self-existent, has declared ten places of punishment for the three lower tribes, but the person of a Brahmin is inviolable. The

Corporal punishment is ten-fold, and must not be inflicted on a Brahmin.

\* *Menu*, 8, 129; but *Goutama*, cited in the *Viddatandava*.

parts of generation, the belly, the tongue, the two hands, and fifthly the two feet; the eye, the nose, both ears, the property, and (other parts of) the body.”\* It should be observed, that punishment is to be inflicted on the offending member.

Other modes of punishment.

5. The other methods are, an imposition of labour or a commitment to prison, as has been propounded by *Catyáyana*: “A person proved to be a pauper should be compelled to work at his proper occupation, and if unable, should, with the exception of Brahmins, be committed to prison.”†

Special punishment for a delinquent Brahmin being a pauper.

6. A Brahmin, being destitute of property, should suffer dismissal from office, &c. as *Goutama* has propounded: “Should he be a delinquent, the punishment of dismissal from office, of reprimand, of banishment, and of branding, should be had recourse to.”‡ So also *Ná’reda* has said: “Corporal punishment, deprivation of property, banishment, and branding, are the stated punishments. Mutilation is propounded as the punishment for capital offences. These are declared to be the general punishments.”|| Having premised this, he proceeds: “All these apply to a Brahmin, except the corporal punishment. A Brahmin must not be corporally punished.”¶

Additional modes of punishment.

7. The punishment of ignominious tonsure may be had recourse to, of banishment from the city, of setting a disgraceful mark on the forehead, and of exposing him on an ass.

Manner of branding.

8. Particular rules have been specified for branding. “For defilement of his spiritual teacher’s bed, the mark of a

\* *Menu*, 8, §§ 124 and 125, cited in the *Vivádatandava*.

† *Vivádatandava*.

‡ *Ibid*.

|| *Ibid*.

¶ *Náreda*, cited in the *Vivádatandava*.

*rubya*; for drinking spirituous liquors, the mark of a wine-flagon; for theft, the foot of a dog; for the murder of a Brahmin, the figure of a headless man.”\*

9. But the text of *Apastamba*, directing that a Brahmin should be deprived of vision, must be interpreted to signify, that at the time of banishment from the city, a cloth should be bound round his eyes, and not that his eyes should be extracted, because such an interpretation would be in contradiction to the text of *Menu* and *Goutama*: “But a Brahmin let him only banish”† The person of a Brahmin is inviolable.”‡ It is needless to expatiate farther on this question.

Construction of a text of *Apastamba*.

## SECTION V.

### *Of Possession without a Title.*

1. Possession has been declared to be evidence of right, from its conformity with right. Should it be objected, that possession cannot afford evidence, because mere possession does not conform with right, [it is admitted in reply.]

A title is stronger evidence than mere recent possession.

XXVII. “A title is more powerful evidence than possession unaccompanied by hereditary succession.”|| (a)

2. A title arises from gift, sale, or other cause of right. That is more powerful or more weighty evidence in the establishment of right, because possession is dependant on a title, as *Nāreḍa* has said: “Possession with a clear title affords evidence; but possession constitutes no evidence, if

Simple possession is no evidence.

\* *Nāreḍa*, cited in the *Vivādatandava*.

† *Menu*, 8, § 123.

‡ *Vyavahāramayūc'ha*.

|| *Yājñavalkya*, cited in the *Vivādatandava* and *Smṛitichandroḍī*

(a) XXVII. R. and M. Acquisition by title is stronger than possession, unless this has come down from ancestors.

unaccompanied by a clear title :”\* nor is a title of right established from mere possession, because possession of another’s property may be obtained by usurpation or other [unjustifiable] means. Hence it has been declared: “He who simply pleads possession, but no title, in consequence of adducing such false possession is to be considered as a thief.”†

Possession is evidence, when accompanied by five conditions,

3. But it is now declared, that possession is evidence when accompanied by the five following conditions,—a title, length of time, continuity, non-interruption, and the knowledge of the adverse party; according to the text, “Possession is five-fold,—titled, long, continuous, uninterrupted, and known to the adverse party.”‡

Also when accompanied by hereditary succession,

4. By propounding an exception in the case of possession accompanied by hereditary succession, it is demonstrated that possession, even independent of a title, may be evidence of right. The connection of the sentence is as follows: A title is weightier evidence than possession, provided that possession is unconfirmed by hereditary succession, that is, the consecutive enjoyment of three ancestors. That again is weightier than a title, because it is independent of a title.

It affords presumption of a title.

5. But it must be understood, that it is independent of the production of a title, and not independent of its existence, for its existence is inferrible from that possession.

A title is evidence in cases within the memory of man, but beyond such me-

6. The exception in favour of hereditary succession applies to a case beyond the memory of man, and the text showing the superiority of a title intends a case within the memory of man; because in cases falling within the memory

\* *Vivādatandava, Smṛitichandricā.*

† *Vivādatandava.*

‡ *Vyāsa*, cited in the *Vivādatandava*; but *Pitāmaha* in the *Smṛitichandricā*, and *Catyāyana* in the *Dāyatātwa*.

of man, as it is practicable to produce a title, if such title is not produced, it is certainly inferrible that it never existed, and consequently, in such cases, the evidence of possession is dependant on the production of a title; but as from the non-production of a title in cases extending beyond the memory of man, it is impossible to be certain of its non-existence, possession accompanied by hereditary succession may be evidence in such cases, independent of the production of a title.

memory possession is sufficient.

7. This has been clearly laid down by *Cat'yāyana*: "In cases falling within the memory of man, possession with a title is admitted as evidence of landed property. In cases extending beyond the memory of man, the hereditary succession of three ancestors is admitted even without a title."\*

Text of *Cat'yāyana* cited in confirmation.

8. The period of one hundred years is defined to be within the memory of man, from the text, "The age of man extends to one hundred years."† "Even without a title:" that is to say, where there is no certainty of the non-existence of a title inferrible from its non-production. Therefore possession for upwards of one hundred years, hereditary, uninterrupted, and falling under the observation of the adverse party, confers a right, as it forms a presumption of, from its conformity with, a title.‡

One hundred years defined to be a period within the memory of man.

\* *Vivādatandava* and *Smṛitichandricā*.

† *Vivādatandava*.

‡ Quia vero tempus memoriam excedens quasi infinitum est memorialiter; ideo ejus temporis silentium ad rei delicturæ conjecturam semper sufficere videbitur, nisi validissimæ sint in contrarium rationes. Bene autem notandum est a prodentioribus jurisconsultis non plane idem esse tempus memoriam excedens cum centenariò quanquam sæpe hæc non longe abeunt, quia communis humanæ vitæ terminus sunt anni centum, quod spatium ferme solet ætatis hominum aut *geneas* tres efficere; quas Antiocho Romani objiciebant, cum ostenderent repeti ab eo urbes quas ipse, pater, avus nonquam usurpassent.—*Grotius Lib. 2, Cap. iv. 7.*

Unauthorized possession even in the second and third generation punishable under certain conditions.

9. But in the case of a period extending even beyond the memory of man, possession is no evidence, if there be traditional proof of the absence of a title. On this is founded the rule, "He who enjoys without right, even for many hundred years, the ruler of the earth should inflict on that sinner the punishment of a thief."\* It must not be supposed from this text, "*He who enjoys*," &c. from the expression of the singular number, and from the term "*even*," prefixed to the words "*for many hundred years*," that punishment is to be awarded to the first person only who retains possession for a long time without a title, because this would imply that possession without title of the second or third occupant would be good evidence of right; but this is inadmissible, being contrary to the following text to *Na'veda*: "For the first, gift is a cause; for an intermediate claimant, possession with a title,"† &c. Hence it follows that the text, "*He who enjoys*," &c. must extend indiscriminately to all cases of unauthorized possession.

Possession by three ancestors not sufficient evidence without length of time.

10. The text, "That which is held even illegally without an apparent title, by three ancestors and the father, cannot be reclaimed, having been retained by three successive generations,"‡ must be interpreted to signify three successive ancestors, inclusive of the father: but the mention of three successive ancestors evidently alludes to time extending beyond the memory of man. Were it confined to the possession of three consecutive persons, then as the decease of three successive occupants might happen in one year, it would follow that the second year's possession without a title would afford evidence of right; but this would be contrary to the rule, "In cases falling within the memory of man, possession with a title is admitted as evidence of landed property," (§ 7.) But

\* *Nāveda*, cited in the *Vivādatandava* and *Smṛitichandricā*.

† Section 6, §§ 5.

‡ *Vivādatandava*, but *Nāveda* in the *Smṛitichandricā* and *Dāyatatwa*.

the text, "That which is held even illegally," &c. means, that if, in a case of illegal possession, the property cannot be reclaimed, it follows *a fortiori* that it cannot be reclaimed where there is no certainty of illegality ; and the text, "That which is immemorially held with a title by three ancestors, cannot be resumed from its having descended through three generations,"\* must be interpreted to mean, with an immemorial, or without a demonstrable title, not without the existence of a title ; for it has already been declared, that right does not accrue, even from centuries of occupancy, without the existence of a title. Such is the signification of the rule concerning the hereditary succession of three ancestors.

11. But [should the objection be urged,] that it is irrelevant to declare that in cases falling within the memory of man, possession accompanied by a title is evidence of right ; for if the title may be derived from any extrinsic source of evidence, [such as purchase, &c.] then the right must be deducible from that alone, nor can possession be any evidence either of right or title ; and if the title is to be inferred from any extrinsic source of evidence, how can possession accompanied by it [by title] afford evidence [of right] ? It is replied, continuous possession accompanied by a title derived from other evidence, affords evidence of right at a subsequent period ; but a title, such as purchase, &c. though established, unaccompanied by possession, is not evidence of right at a subsequent period, because, in the intermediate time, the right may have become extinct by gift, sale, or other means of transfer. All this is irrefragable †

Possession with an inferrible title is evidence of right.

\* *Viridatondava.*

† This seems to correspond with the civilians' notions of the definition of right.

"Some have founded the nature of dominion in the right or power of disposing of it : which is false ; because minors, &c. cannot dispose of their estate, and yet in that estate are the proper owners or *domini*. *Non est argumentum, ideo aliquid tuum non esse, quia vendere non potes,*



## SECTION VI.

*Of a Title without Possession.*

Title is not complete without possession.

1. It has been shown that possession, when accompanied by a title, affords evidence of right; but lest it should be supposed that a title without possession affords equal proof, it is declared,

XXVIA. "Where there is not the least possession, there a title is not weighty."\*(a)

1a. Such is the intent. With whatsoever title there is not the least occupancy, in that title there is no sufficient weight.

Acceptance necessary.

2. Gift consists in the relinquishment of one's own right, and the creation of the right of another; and the creation of another man's right is completed on that other's acceptance of the gift, but not otherwise.

Acceptance is three-fold.

3. Acceptance is made by three means, mental, verbal, or corporeal. Mental acceptance is the determination to appropriate: verbal acceptance is the utterance of the expression, This is mine, or the like; which is a concrete certainty:† corporeal acceptance is manifold, as by touching.

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*quia consumere, quia mutare in deterius, aut melius.* Last of all, I could not describe it by possession alone; for possession is one thing, and property, or dominion, another. Possession is properly the legal attendant upon dominion. It is something like exerting the act of property, for by it we effectually exclude the seisin of others; and when we come to claim our own from the occupancy of those whom we conceive to detain or *possess* our property unlawfully, we mean to recover our right of exerting that act I mentioned. Moreover, dominion has its *foundation* only in natural or corporal possession."—*Taylor's Civil Law*, page 477.

\* *Catyañya*, cited in the *Smritichandrici* and *Vivadatondava*.

(a) XXVIA. R. and M. But acquisition by title is of no avail without possession for a short time.

† I am not sure that I have correctly rendered the terms "*svikulpika pratyaya*," nor have I been able to obtain any information from the treatises

Special injunctions have been issued as to this mode of acceptance, "Let him give the skin of an antelope by holding its tail, a cow in the same manner, an elephant by his foreleg, a horse by his mane, and a slave girl by her head." *Aswajayana*, has also said, "Let him verbally address rational beings, and touch creatures not having the faculty reason, and female slaves."\*

4. The acceptance of gold, cloths, &c. being completed by the ceremony of bestowing water, and falling, therefore, under either of the means, may be designated as a three-fold acceptance; but in the case of land, as there can be no corporeal acceptance without enjoyment of the produce, it must be accompanied by some little possession: otherwise the gift, sale, or other transfer is not complete. A title, therefore, without corporeal acceptance, consisting of the enjoyment of the produce, is weaker than a title accompanied by it, or with such corporeal acceptance.

Title to land incomplete without possession.

5. But such is the case only, when of these two the priority is undistinguishable; but when it is ascertained which is first in point of date, and which posterior, then the simple prior title affords the stronger evidence; or the interpreta-

Possession in some cases more weighty than a title.

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which have hitherto appeared in the English language on the subject of Hindu Dialectics. In the *Bhāṣa-purichheda*, a treatise on logic of the highest celebrity in the *Nyāya* school, the definition is thus given, *nirvikulpikumpṛakarutade shoonium-sumbundhanurugahe*, which may be rendered "abstract, divested of properties, unassociated with relations." *Suvikulpikum* is the opposite of this, "concrete," or "not abstract." In the instance given, the verbal declaration causes an association, or creates a relation between the receiver and the thing received.

\* Uncertain, as cited in the *Vicādatandava*. [Let him verbally, &c.] If the thing to be received be capable of motion and speech, then the receiver should verbally address it, saying, Thou art mine; and the received should say, I am thine. But if the thing to be received be without intelligence, as a cow or the like, or a female slave, though a rational creature, the receiver should merely touch the present.—*Subodhini*.

tion may be as follows: "Evidence is said to consist of documents, possession, and witnesses."\* This having been premised as the general rule; the text, "A title is more powerful than possession unaccompanied by hereditary succession," and "Where there is not the least possession, there a title is not sufficient,"† have been propounded to point out to which the superiority belongs, where the three descriptions of evidence meet: as for instance, in the case of the first acquirer, if a title be proved by witnesses, it is of greater weight than possession unaccompanied by hereditary succession. Again, possession accompanied by hereditary succession, vested in the fourth descendant, is more weighty than a title proved by documents; but in the case of an intermediate [claimant], a title accompanied with even a small degree of possession is better than a title destitute of possession.‡ This has been expressly declared by *Núreda*: "For the first, gift is a cause; for an intermediate [claimant], possession with a title; but long and hereditary possession alone, is also a good cause."||

The first acquirer not shewing a title is punishable.

3. "*He who sees his lands possessed by a stranger,*"¶ &c. It has been declared, that to one who observes without interference his landed property enjoyed by another for upwards of twenty years, and his personal property for upwards of ten, there will be no restitution of the profits: but lest it should be supposed, that as there is no restitution of the profits, there will consequently be no award of penalty, the following text has been propounded, from which it is inferrible, that the extent of the penalty is to be adapted to the condition of the person and the nature of the evidence.

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\* *Catýdyano*, cited in the *Smritichandricá*.

† *Veeramitrodaya*.

‡ See Blackstone on this subject, vol. ii. p. 197, note.

|| *Smritichandricá, Vivádatandava*.

¶ *Vide supra*, Sec. 3, 1.

XXVIII. "He by whom a title has been obtained, must produce it when he is impugned, but his son and his grandson need not; for them, possession is more weighty."\* (a)

7. By whatsoever person a title to landed or other property has been first acquired, that person, when his right to such landed or other property is disputed, must produce and prove his title by documentary evidence of gift or other mode of transfer. From this it is inferred, that a penalty attaches to the first acquirer failing to shew his title; but his son, the second incumbent, need not shew his title, but only continually uninterrupted and open possession. Hence it appears, that if he cannot prove a title, no penalty attaches to him; but penalty attaches to him, failing to show possession accompanied by the condition above-mentioned. This is established; but his son again, the third incumbent, need not shew either a title or possession accompanied by the above-mentioned condition, but only hereditary succession. Hence it appears, that penalty attaches to the third incumbent, failing to show hereditary succession, but not failing to show a title or possession accompanied by the above-mentioned condition.

But to avoid the penalty, his son need only prove uninterrupted, and his grandson hereditary succession.

8. Possession alone, then, is more weighty for the second and third; with this distinction, that it is strong in favour of the second, and stronger in favour of the third party. But here also the real meaning is, that although, in the case of all three, from the non-production of a title the property is equally lost, yet there is a difference as to the penalty. It

The non-production of a title causes forfeiture to the son and grandson of the first acquirer, but penalty also to the first acquirer.

\* *Yajñamāyā*, cited in the *Smṛitichandricā* and *Vyākṛantīyā*.

(c) XXVIII. R. and M. If one holding by title have it questioned [in a Court of Justice,] he must establish it by proof: but not so his son, nor his son's son; in their case, possession is of greater weight.

has been declared also : "He by whom the title has been acquired is subject to penalty on failure of producing it, but not his son or his grandsons, though the possession of these two also is forfeited."\*

The defendant dying, pending a claim against him, his son must prove his title, possession not being sufficient.

9. It has been held, that possession beyond the memory of man is good evidence of right, independently of the demonstration of a title. Here an exception to that rule is declared.

XXIX. "He who dies while a claim adduced by another is pending against him, his heir must produce it [the title.] Possession without a title is not in such case an adequate plea."†(a)

9a. When an usurper, or other person having a claim made against him, departs this life while the claim is pending, before the final decision of the suit, his son, or other heir must prove his title.

Because the plea of possession would not have availed the original defendant.

10 In such cases possession without the production of a title, though established by witnesses, does not afford evidence of right, because the plea of possession would not have been available in the original claim. It has also been declared by *Náreda* : "The cause of a litigant party dying *pendente lite*, must be undertaken by his son. Possession will not decide the suit."‡ So that it is an established fact, if a litigant party die while the claim is pending, it is not thereby determined.

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\* *Harita*, cited in the *Vyavahāramayūc'ha*.

† *Yājñyavalkya*, cited in the *Smṛitichandricā* and *Vivādatandava*.

(a) XXIX. R. and M. If one whose title is questioned die [pending the suit,] his heir must establish it by proof; in such case possession without title will not avail. \*

‡ *Yājñyavalkya*, cited in the *Vyavahāramayūc'ha*, but uncertain in the *Smṛitichandricā*.

## CHAPTER IV.

### OF APPEALS AND OTHER MATTERS.

#### SECTION I.

1. Although a judicial proceeding may have been decided, it may in some instances be carried farther while the litigant parties are alive; but in others, the decision is final. Some cases appealable, others not.

2. With a view to elucidate this rule, the relative consequence of judicial tribunals; assemblies of townsmen [*puga*], and companies of traders [*Sreni*], is next propounded. Relative rank of tribunals propounded.

XXX. "Persons specially appointed by the ruler: assemblies of townsmen: companies of traders, and families: these are classed according to their relative consequence, in the investigation of the affairs of men."\* (a)

3. "*Persons specially appointed by the ruler:*" those expressly nominated by the ruler or king to investigate judicial proceedings, such as are described in the following and other texts: "Persons who are versed in literature, should be appointed assessors of the court,"† &c. *Assemblies of townsmen*: of people of various tribes and various professions sitting in one place, as of villagers or citizens. *Companies of traders*: assemblages of persons of similar or various tribes exercising Exposition of the text.

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\* *Veeramitrodaya* and *Smritisāra*.

(a) XXX. R. and M. Those appointed by the monarch, communities, guilds, and families, have authority, one after the other, to investigate law-suits among men.

† *Vide supra*, Chap. i. Sec. 1, § 10.

the same livelihood, as horse-dealers, pawn-sellers, weavers, and shoe-makers. *Families*: assemblages of cognate relatives, connexions, and kinsmen.

An appeal may be preferred from the decision of a family upwards to persons specially appointed by the ruler.

4. It must be understood, that of these four tribunals, "persons specially appointed by the ruler" and the rest, the first in the order of reading is the most considerable or important. "*Of men*:" of litigants. "*In the investigation of affairs*:" in the administration of justice. This is an established rule. A judicial proceeding having been decided by persons specially appointed by the ruler, if there be dissatisfaction on the part of the litigant fancying himself aggrieved, an appeal cannot be preferred from them to an assembly of townsmen: nor, having been decided by an assembly of townsmen, to a company of traders: nor, having been decided by a company of traders, to a family: but having been decided by a family, an appeal may be preferred to a company of traders, to an assembly of townsmen, and to persons specially appointed by the king.

An appeal may be preferred to the king. If affirmed, appellant to be amerced; if reversed, judicial authorities to be amerced.

5. It has been declared by *Nārada*, that after a case has been decided by persons specially appointed by the king, an appeal may be preferred to the king himself, in the following text: "Families: companies: assemblies: persons specially appointed: the king: these are the tribunals for judicial proceedings, and their relative consequence is in their consecutive order." A case on which a wager has been laid on the result, having been appealed to the king, and having been decided by him in council, and in presence of the authorities who tried the case, the unreasonable appellant must be amerced, if he is cast; but if he succeeds, the constituted judicial authorities must be amerced.

Decisions liable to reversal.

6. It has been stated, that after decision by the inferior tribunals, a case may be carried farther, and that the decrees of the superior courts are not appealable. Next is propounded

an instance, in which the decrees of all authorities are liable to reversal.

XXXI. "He shall reverse cases decided by compulsion, by fear, by women, at night, in the inside of a house, abroad, and those brought forward by enemies."\* (a)

6a. He shall reverse cases decided or terminated by compulsion, or violence, by fear or terror; so also cases decided by women, at night, or in the night time, though not by females; in the inside of a house, or in the interior of a dwelling; abroad or outside of the town; and cases decided by enemies.

7. Moreover.

XXXII. "A suit adduced by one intoxicated, or deranged, or diseased, or distressed, or a minor, or terrified, or uninterested, &c., is not valid."† (b)

What suits are invalid.

7a. "*Intoxicated*," with spirituous liquors. "*Deranged*:" disordered in any of the five modes by a prevalence of wind, or of bile, or of phlegm, or under a morbid state of the three humours, or under planetary influence. "*Diseased*:" by sickness. "*Distressed*:" distress engendered by the privation of ease and the acquisition of pain. "*A minor*:" one incom-

\* *Veeramitrodaya, Subodhini, &c.*

(a) XXXI. R. and M. The monarch shall annul decisions of suits which have been brought about by force or fraud; also those made by women, those made at night, those made in private chambers, those made in a place beyond the limits, and those made by enemies.

† *Veeramitrodaya, Subodhini, &c.*

(b) XXXII. R. and M. A suit instituted by one intoxicated, or insane, or stricken with disease, or given up to vice, or a minor, or one under the influence of fear, &c., or one having no interest, is invalid.



petent, through nonage, to the transaction of his affairs. "Terrified:" by enemies. "Uninterested:" from having no connexion with the matter at issue. The use of the term "&c." signifies a suit adduced in opposition to usages,\* of the town or the realm and the like. It has been established by those versed in judicial proceedings, that the suit of one will not be attended to, when it is in opposition to the usages of the town or realm, as appears from the text: "That act which is in opposition to the usages of a town or realm, and that act which has been prohibited by the ruling power, have no validity;† and this rule must also be understood relatively to the act of him who has no delegated or natural interest in the suit.

Certain suits improper between what parties.

8. But the text, "In a dispute between tutor and pupil, father and son, husband and wife, master and slave, a judicial proceeding cannot be entertained,"‡ is not intended to exclude them altogether from legal redress, because even between them judicial proceedings are allowable.

A pupil may have redress against his tutor in certain cases.

9. Moreover, "A pupil must be corrected without chastisement; but if this be impracticable, recourse must be had to slender rods composed of strings or cane, and the king will punish one using other instruments than these."|| This is a text of *Goutama*: "by no means on the head, as declared by *Menu*." From which rules it appears, that if a tutor, impelled by anger, strikes violently, or on the head; and if the pupil thus treated in an illegal manner, should represent his grievance in the king, a judicial proceeding will be entertained in this case.

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\* *Veeramitrodaya, Subodhini, &c.*

† Ibid.

‡ Ibid.

|| Ibid.

10. "The ownership of father and son is the same in land which was acquired by his father,"\* &c. From this text it appears, that in the case of land acquired by the grandfather, the ownership of father and son is equal: and therefore, if the father make away with the immoveable property so acquired by the grandfather, and if the son have recourse to a court of justice, a judicial proceeding will be entertained between the father and the son.

And a son against his father.

11. "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint." From this text it appears, that if, under other circumstances, the husband make away with his wife's property, and being required to refund, and having assets refuse to do so, then a judicial proceeding may be entertained between husband and wife.

And a wife against her husband.

12. On the subject of a hired servant, the cases will be propounded in which judicial proceedings may be entertained between him and his master. "Whichever of these may rescue his master from imminent danger shall be emancipated, and shall receive a son's share of the inheritance." From this text it appears, that there is no bar to the institution of a judicial proceeding by a slave against his master, refusing him emancipation and a share of the inheritance.

And a slave against his master.

13. The import of the text, therefore, "In a dispute between master and pupil," &c., is, that pupils and the like preferring an action, should be advised by the king in court, that such proceedings are not creditable, either really or apparently. But if the pupils or other similar suitors are

All such suits admissible, though not creditable.

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\* *Yājñavalkya*, cited in the *Dāyabhāga*, *Dāyatatwa*, *Dīyācramasangraha*, *Virtulātandava*, *Vivādarṇavasetu*, *Vivādhakṣāraṇa*, &c.

inflexible, the case must be proceeded on according to the regular form.

Interpretation of  
a text of *Náreda*.

14. Notwithstanding the following text of *Náreda*, "The suit of one against many, of women, and of a servant, is to be rejected: this has been declared by high legal authorities," still a judicial proceeding of one with many on account of the same matter may be entertained, as appears from the following and other texts: "He who usurps the property of many, he who breaks an engagement formed [with many,]" and "him who has been assaulted by many," &c. The meaning must be, that a judicial proceeding cannot be entertained between one and many, on account of divers different matters at the same time.

Certain married  
women may sue.

15. Women\* also who are independent, such as milk-women and wives of vintners, may institute judicial proceedings. The exception refers to respectable married women whose husbands are alive. From their coverture they cannot sue independently.

Servants may  
sue for their own  
rights.

16. The exclusion† of a servant from suing, has reference also to his dependant state, but is not intended to exclude him from instituting a judicial proceeding relative to his own peculiar interests by permission of his master. This is the proper construction.

\* A married woman carrying on trade openly for her own account distinct and separate from the traffic of her husband may, under the French institutions, bind herself by obligations relative to her trade without the sanction and authority of her husband, and subject herself to a personal decree.—*Collebroke on Obligations and Contracts, Part 1, p. 233.*

† In the Hindu law, as in the Roman jurisprudence, a slave has in general no property exclusively his own, and his contracts are imperfect by reason of his dependance on the will and control of a master. But by his master's indulgence he may have separate and peculiar property, over which he has full power.—*Ibid.*

## CHAPTER V.

### DIGRESSION CONCERNING TROVE AND PLUNDERED PROPERTY.

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#### SECTION I.

1. Cases which are liable to reversal having been treated of, next is propounded property liable to restoration.

Trove property to be restored to the owner.

XXXIII. "Trove property is to be restored by the king to its owner: but if he fails to identify it, he is to be amerced with an equivalent penalty."\* (a)

2. Gold or other property, having been lost by the owner and found by tax-gatherers, police officers, and such like people, and having been delivered to the king, is to be restored by the king to its rightful owner, if the owner identify it by marks of its quality and quantity; but if he fail to identify it, he is to be fined in an amount equivalent [to the value of the property claimed], from his having uttered a falsehood.

Explanation of the text.

3. The rule for the restoration of trove property is here specially propounded, because finding has already been enumerated among the causes of property, and therefore what is found is property.

Reason for declaring this rule.

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\* *Veeranilrodaya.*

(a) XXXIII. R. and M. When lost property is found, it shall be restored by the monarch to the owner: if the claimant fail to identify by some sign, he shall pay an equivalent fine.

Period for which  
trove property  
should be kept in  
deposit.

4. A period of limitation has also been declared : "Trove or waif property having been recovered by tax-gatherers or police officers, the rightful owner will recover within the period of one year : after the king will take it."\* *Mennu* has extended the period of limitation to three years in the following text. "Three years let the king detain the property of which no owner appears, *after a distinct proclamation* : the owner appearing within the three years may take it, but, after that term, the king may confiscate it."† Hence it would appear necessary to keep it in deposit for three years.

Deductions to  
be made after cer-  
tain periods.

5. If the rightful owner appear within the year, he will recover the whole. If he appear after the expiration of the year, a sixth is to be deducted as a fee on the deposit, and the residue restored, as has been declared. "The king may take a sixth part of the property so detained by him, or a tenth, or a twelfth, remembering the duty of a good king."‡ Whence it is inferrible, that if the owner arrive within the year, the whole is to be restored. If in the second year, a twelfth ; in the third, a tenth ; and in the fourth and succeeding years, a sixth is to be deducted.

Reward to the  
finder.

6. The king is to give a fourth of his own share to the finder ; but if the owner appear not at all, he is to give a fourth of the whole to the finder, and to take the rest, as has been declared by *Goutama* : "The king is to keep in deposit unclaimed trove property for a year ; afterwards a fourth share of it goes to the finder, and to the king the rest."||

Period of limi-  
tation defined not  
to annul the own-

7. The use of the word "*year*" here in the singular number is not intended to confine the period to one year,

\* *Veeramitrodaya*.

† *Mennu*, 8, § 30.

‡ *Mennu*, 8, § 33.

|| *Ratuhara*, &c.

as is evident from the text, "Three years let the king detain the property," &c., (§ 4;) and the conclusion of the text, "after that term, the king may confiscate it," (§ 4,) merely intends that, should the owner not appear within that period, the king is at liberty to use the property after the expiration of such period; but should the owner [subsequently] appear, the king, having deducted his own share, shall restore to him a sum equivalent [to the value of the property consumed.]

er's right, but to authorize the king to use the property.

8. The rules above recited relate only to gold and similar valuables. But the rules relative to stray cattle will subsequently be propounded under the texts, "He shall give *paṇas* for an animal with uncloven hoofs," &c.

Rules relative to stray cattle will subsequently be declared.

9. Having thus declared the law relative to trove property, such as gold, &c., found lying on the high road or at toll and police stations, next is propounded the law relative to gold, &c., long buried in the earth, and usually called treasure.

Law relative to hidden treasure.

XXXIV. "But of a treasure anciently repositied under ground, *which any other subject, or* the king has discovered, the king may lay up half in his treasury, having given half to the Brahmins. A learned Brahmin, having found a treasure formerly hidden, may take it without any deduction, since he is the lord of all."\* (a)

XXXV. "But if it be found by any other person, the king is to keep the whole, giving one-sixth to the finder. But not having represented, and being known,

\* *Menu*, Chap. 8, § 38 and 37, cited in the *Dīgātatra*.

(a) XXXIV. R. and M. If the monarch find a treasure, he shall give half of it to the twice born. If, on the other hand, a twice-born [find a treasure], he shall, if learned, take the whole, for he is lord of all.

the king shall cause him to relinquish the whole, and amerce him."\* (a)

Exposition of  
the preceding text.

10. The king having found treasure of the nature above described, and having given half of it to Brahmins, will keep the residue in his treasury ; but if a learned Brahmin, that is, a priest versed in scriptural lore and of good conduct, find the treasure, he is to keep the whole, because he is the chief of the whole world : but if the treasure be found by any other than the king or a learned Brahmin, for instance, by an illiterate Brahmin, or by a man of the military tribe, the king, having given a sixth of it to the finder, will keep the residue, as *Vasishtha* has ordained : " Whoever finds property whose owner is unknown, the king will take it, giving to the finder a sixth ;"† as *Goutama* has also declared : " Treasure found is the property of the king, excepting [that found by] a learned Brahmin. But any other than such Brahmin finding it, and representing the circumstance, will obtain a sixth."‡ "*Anibedita*," not having represented. The participle is here in an active signification,|| not having represented, "*anibedita*," and having been discovered, "*vignyata*," forms the compound *anibeditavignyata*. Thus when

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\* *Menu*, cited in the *Dáyatalwa*, but not found in the Institutes.

(a) XXXV. R. and M. Of treasure found by any one else, the monarch shall take a sixth. If the finder do not make report, but [his discovery] comes to light, he shall surrender [what he has found,] and shall, besides, be punished.

† *Ratnácara*, *Smritichandri*.

‡ Ibid.

|| "When वृ is affixed to *Dhatoos*, which mean knowing, serving, or desiring, or to those with an *Unubhundhu*, जि, the words formed thereby are active, passive, or containing, and are either in the present or past tense." Carey's *Sanscrit Grammar*, p. 572. In the instance in the text, the participle is, properly speaking, in the passive form, but being derived from the *Dhato* विद् to know, it may be used in an active signification, agreeably to the above rule.

ever has found treasure, and does not represent the circumstance, and is afterwards discovered by the king, is to be made to restore the whole, and to be amerced according to his circumstances.

11. In this case also, if the owner of the treasure appear, and identify his property by description of its quantity and quality, the king shall restore it to him, after having made deductions of a sixth or twelfth part. As *Menu* has declared : "From the man, who shall say with truth, 'This property which has been kept, belongs to me,' the king may take a sixth or twelfth part, for having secured it."\* The amount of the deduction is to be regulated by the tribe of the claimant, and the period [expired.]

Treasure to be restored to the owner after certain deductions.

12. Plundered property is next treated of.

XXXVI. "The king must restore to his subjects property plundered from them ; not restoring it, he incurs the sin of the person [from whom it was robbed.]"† (a)

The king must restore to his subjects property plundered from them.

12a. Having recovered from the robbers the property robbed, it is to be restored to that subject, living within his realm, from whom it was taken ; and not restoring it, the sin of the person robbed devolves upon him, and likewise the sin of that theft, as *Menu* has said : "To men of all classes, the king should restore their property which robbers have seized ; since a king who takes it for himself, incurs the guilt of a robber."‡

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\* *Menu*, 8, § 35.

† *Ratnâcara*.

(a) XXXVI. R. and M. Stolen property, however, is to be given up by the monarch to the subject ; seeing that, if he do not give it, he shall bear all the sin of that person from whom [it is stolen.]

‡ *Menu*, 8, § 40.



Property seized by robbers must be restored by the king to men of all classes. The king consuming it himself, incurs the sin of robbery.

Neglect also culpable.

13. If having recovered it from the robber, he enjoys it himself, he incurs the sin of the person who seized the property; and if he is careless about the plundered property, he incurs the sin of his subject [from whom it was taken.]

If plundered property be not recovered, its amount must be paid from the royal treasury.

14. If, having used every endeavour, he fail to recover the plundered property, he must refund the amount of it from his treasury; as *Goutama* has declared: "Having recovered property seized by robbers, he must restore it to its right place; or he must pay out of his treasury."\* So also has *Crishna Dwaypayana* declared: "If unable to recover the plundered property, by the king so incapable, its amount must be restored out of his own treasury." Having thus propounded both the general and special introduction to judicial proceedings, debt on loans will next be treated of, as the first of the eighteen titles of law.

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\* Formerly there was a clause in the engagements of all landholders and farmers of land, by which they were bound to keep the peace, and in the event of any robbery being committed in their respective estates or farms, to produce both the robbers and the property plundered.

# CHAPTER VI.

## RECEIPT OF LOANS.

### SECTION I.

#### *Rules for Delivery of Loans.*

1. Having expounded the judicial proceedings in general and particular way, the legislator now proceeds to explain the topic of Receipt of Loans, which is one of the eighteen subjects of judicial proceedings, beginning with the subject of "where there is a pledge, the interest, month by month, shall be an eightieth part;" and ending with that of "Provided, the (value of the) usufruct of the thing pledged be double (the amount of) the loan."

Subject proposed.

2. The said Receipt of Loans is seven-fold. A debt of such a kind should be *paid*; a debt of such a kind should *not be paid*; a debt should be paid by *this representative*; a debt should be paid *at this time*; a debt should be paid *in this mode*; these have regard to the debtor. The rule for delivery and the rule for receipt. These two are in respect to the creditor. It is clearly explained by *Náreda*. "What debt should and should not be paid: by whom, at what time, in what mode; and the rules for delivery and receipt are comprised under the title of Receipt of Loans."

Seven fold division of Receipt of Loan.

3. Of these the rule for delivery by the creditor is first expounded, because it precedes the other.

Rule for delivery by the creditor, first explained.

XXXVII. "Where there is a pledge, the interest, month by month, shall be an eightieth part; otherwise, two, three, four or five parts, in a hundred, according to the order of caste."

Rate of interest with or without pledge.

"Month by month" and "pledge" explained.—Rates of interest for the different castes.

4. "Month by month" every month, "pledge" means any thing delivered in security, that is to say, mortgage. In cases where the pledge has been delivered, an eightieth part, will be the legal interest of the principal advanced. "Otherwise" when there is no pledge. "According to the order of caste," *i. e.*, Brahmins, &c., the legal rate is two, three, four and five per cent. Two per cent. to *Brahmin* (debtor,) three to *Cshatria*, four to *Vaishya* and five to *Sudra*. "Month by month" (in the text) refers to all.

Four kinds of interest.

5. This interest is receivable monthly, consequently it is called (*Kalica*) periodical. If the same interest being divided by the number of days (in a month) be received daily, it is called (*Kayica*) corporal. Thus says *Náreda*. "In law, interest on loans is of four kinds; (*Kayica*) corporal, (*Kalica*) periodical, (*Karita*) stipulated and *Chakravridhi* running like a wheel."—Interest at the rate of one *Pana* or quarter of a *Pana* or other fraction of a *Pana*, repeatedly paid without diminishing the principal, is named corporal; that, which runs month by month, is considered as periodical, (or payable at a time certain.) That interest is called stipulated, to which the debtor, of his own accord, has agreed; and interest upon interest is what is called "running like a wheel."

Rates of interest.

6. The rate of interest is different in respect to different borrowers.

Rates, in cases of risk.

XXXVIII. "They however who travel in forests give ten parts; they who go to sea, twenty parts, in a hundred."

Borrowers travelling in a dense forest, or traversing the ocean, to pay 10 or 20 per cent. respectively, on account of risk.

7. The borrowers, who by taking a loan on interest, enter into a dense forest where there is every probability of loss of life and money, should pay at the rate of ten per cent., and the persons, who traverse the ocean, twenty per cent.; all this in every month. By this it is understood that the creditor

should take (interest) at the rate of ten per cent. per mensem from those debtors, who travel through forests, and twenty per cent. from those who go to sea, since the principal is in jeopardy in such cases.

8. The author next propounds the subject of stipulated interest.

Stipulated interest.

XXXVIIIa. Or, all must pay their creditors, of whatever caste, whatever interest has been stipulated to be paid.

Rate of interest stipulated for must be paid.

9. "All," that is borrowers of every caste, Brahmin, &c., should pay to all classes of creditors the stipulated rate of interest, that is, the rate agreed to be paid, whether the loan is secured by a pledge or otherwise.

Borrowers of all castes should pay the interest agreed upon.

10. Sometimes interest is payable without any stipulation, as *Nāreda* says—"There shall be no interest, without a special agreement on what is lent through affection; but even where there is no such agreement interest will run, after the expiration of six months from the date of the loan.

Where interest runs without any stipulation.

11. Of a person, who having borrowed a thing from another merely for use, goes to a foreign country, *Catáyana* says—"He, who having received a thing (lent for use,) goes to a foreign country without restoring it, must pay interest after a year."

Receiver of a chattel, going to a different country must pay interest after a year.

12. When a person who has borrowed a thing from another merely for use, does not restore it on demand, but goes away to a foreign country, with reference to such a person, he (*Catáyana*) declares—"Though a loan is contracted expressly without interest, yet, if the debtor does not pay it after demand, but goes away to another country, the principal shall carry interest after the lapse of three months."

Loan expressly without interest, if not paid on demand, and borrower goes to another country carries interest after three months.

The same, even if the borrower resides in his native country.

13. If a person, remaining in his native country, does not return the thing borrowed after demand, the king ought to compel him to pay interest from the date of such demand. Thus it is said—"A debtor, who, though living in his own country, does not pay the debt whenever the demand is made upon him, shall be forced, against his will, to pay interest on it, even if there were no stipulation for the payment of interest.

Where interest unless stipulated for does not run.

14. There is an exception to the rule relating to unstipulated interest which is thus declared by *Náreda*—"The price of a commodity, wages, a deposit, a fine imposed, a gift without consideration, and a stake in a game, carry no interest, unless stipulated," "unless stipulated," that is, unless there is a special agreement.

Peculiar kinds of interest for peculiar kinds of things.

15. The author next expounds particular kinds of interest on particular kinds of things.

For female cattle, their offspring is the return.

XXXIX. The offsprings of female cattle [lent] shall be taken as their return.

For female cattle, their offspring, or their milk may be taken as interest.

16. The offsprings of "female cattle" shall be taken as their return or increase. One who is unable to maintain his cattle may lend them to another for support, and take their offsprings. The borrower is he who wishes to take their milk and to support them.

What shall be the highest interest of things, &c.

17. Now the legislator proceeds to declare the highest interest on things which are received as a loan, but kept for a long time without payment of interest.

XXXIXa. On liquids, the highest increase is eight-fold, on clothes, corn and gold, it is four-fold, three-fold and two-fold respectively.

Highest amounts of interest with

18. "Liquids," oil, clarified butter and the like. If the stipulated interest has not been received for a long time,

nothing more than eight times the principal will be allowed as increase. Similarly the highest increase on clothes, corn and gold is four times, three times and twice the amount of principal respectively.

regard to certain articles.

19. *Vashishtha* says that liquids and corn increase three times. "Gold (increases) twice and corn three times; Liquids are indicated by the word corn, which also includes flowers, roots, and fruits. Things sold by weight increase (with interest) three-fold or eight-fold." *Menu* says that corn, flowers, roots, fruits and the like increase five times. "On corn, on *Shada*, on *Laba* and on *Bahya* interest cannot exceed five times (the principal.)" *Shada* produce of field, that is, flowers, roots, fruits and the like. "*Laba*," the fleece of sheep, the pad of mule deer and the like. "*Bahya*" bullocks, horses and the like. The interest on all these does not exceed five times. But this diversity of opinion is reconciled thus. These different rules are to be observed according to the ability of the debtor and the exigencies of the hour, such as famine, &c.

Opinions of *Vashishtha* and *Menu* on the point, and their diversity reconciled.

20. The rule in question applies to (the case of) a single advance, the whole of which is realizable at once. If the amount is realized from one person and advanced to another and thereby renewed, or if the transaction is renewed with the same person more than once, then the interest on gold &c. will exceed double, &c, and increase as before. Also in the case of a single advance on which interest is received daily, monthly or yearly, even if the amount thus received (on different occasions) exceed the double, (the interest will not) cease to run. Since in this case there is no possibility of the (interest) due from the debtor becoming double. So says *Menu*—"The interest of the principal, advanced by a single loan, does not exceed twice (the principal)." There is also another reading *realized* in one

Applicability of the rule in question to only one single advance of a loan, and the modification thereof where it is renewed, or transferred from one person to another.

kump.\* The interest does not exceed twice, if the amount of the principal is advanced by one single loan. But if the advance is realized from one person, and then lent to another or renewed in any other manner, interest may exceed twice the principal. The reading "realized, &c.," should be explained thus, if the interest is gradually collected from debtor, that is, daily, monthly, or yearly, then it may exceed twice the principal. It is likewise said by *Goutama*—"The loan, if allowed to remain (unpaid) for a long time, becomes double." Here the term loan being used in the singular number, it is to be understood that when a renewal of it takes place, then the interest may exceed double (the amount of the principal.) By the mention of the words "long time" it is implied that if the interest is collected gradually, it may exceed double (the amount of the loan.)

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## SECTION II.

### *Rules for repayment of Loans.*

Subject proposed.  
Rules for the re-  
turn of the money  
advanced.

1. Having explained the rules relating to advances made as loans, the author now lays down the rules relating to their repayment.

Enforcement of  
a recognized debt  
should not be  
prevented by the  
king but should  
be compelled if  
necessary.

XL. "The king should not prevent any one from enforcing a recognized debt. If the debtor being pressed for repayment, complains to the king, he shall be punished, and compelled to pay the debt."

"Recognized,"  
"Enforces," and  
"The king should  
not prevent," ex-  
plained.

2. "Recognised," acknowledged by the debtor or established by the testimony of witnesses. "Enforces," to compel payment, that is, by such modes as mild truth, &c. "The king should not prevent," that is, should not hinder (the creditor.)

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\* In the original text of *Menu*, the word *Kusida* is used. The author has explained it thus. A thing invested for increase, it is (called) *Kusida*, principal. Its increase is (called) interest of the principal.

3. The modes mild truth, &c. are thus enumerated by *Menu*. "By mild truth, by litigation, by artifice, by fasting, and fifthly, by force, (a creditor) may recover the property lent."\* "Mild truth," kind language. "Litigation," by process of law, &c. "Artifice," taking ornaments, &c. on the pretext of festival, or the like. "Fasting," that is, (creditor's) fasting at the house of the debtor. "Force," confinement and the like. By these methods (a creditor) may realise the property lent for the sake of increase.

"Mild truth," "litigation," "artifice," "fasting" and "force," explained.

4. By laying down the rule that "the king should not prevent any one from enforcing a recognised debt," the legislator intends to show that a person, who recovers a

King, to prevent creditor from recovering a debt not recognized.

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\* This text of *Menu*, has been explained by *Kulluka Bhatta* in a different way, and his interpretation appears to be more literal and consistent with other texts. It is as follows—"By the mode consonant to moral duty, by suit in Court, by artful management, by distress and legal force, a creditor may recover the property lent; and fifthly by force."

"The mode consonant to moral duty is explained by *Vrihaspati*. By the interposition of friends and kinsmen, by mild remonstrances, by following, (the debtor) importunately or by staying constantly at the house of the debtor, he may be compelled to pay the debt. This mode of recovery is called a mode consonant to moral duty."

*Catyayana* explains the mode of recovery by suit in Court (thus) "A debtor being arrested (and freely acknowledging the debt) may be openly dragged before the public assembly, and confined until he pays what is due, according to the immemorial usage of the country."

Artful management is explained by *Vrihaspati*, "When a creditor, with an artful design, borrows any thing of his debtor, or withholds a thing deposited by him or the like, and thus compels payment of the debt, this is called legal deceit."

*Vrihaspati* has also explained distress and legal force, "When he forces the debtor to pay by confining his son, his wife, or his cattle, or by watching constantly at his door, this is called lawful confinement," "When having tied the debtor, he carries him to his own house, and by beating or other means, compels him to pay, this is called violent compulsion clearly declared by *Catyayana*. "Any creditor, who harasses a debtor by appealing to judicature, shall forfeit his claim and pay an equal amount as fine."



loan, not acknowledged (by the debtor,) is to be prevented by the king. This is clearly declared by *Catyáyana*—"A creditor, who harasses a debtor, who demands a judicial investigation, shall forfeit his claim and pay an equal amount as fine."

Debtor complaining against enforcement of recognized debt, to be punished.

5 If a debtor, being pressed (to pay a debt which he acknowledges) by the modes mild truth, &c., goes to the king and complains against the creditor, he shall be fined according to his circumstances and shall be also made to pay the amount of the debt to the creditor.

The methods for enforcing payment by the monarch, detailed.

6. The methods, for enforcing payment by the king have been detailed (as follows)—"A king should make a Brahmin pay his creditor by mild expostulation only, the others, according to the usages of the country, evil-minded (debtors,) by bodily punishment, and an heir or a friend, by some artful contrivance."

An exception to the text, "when a person aggrieved by another, &c."

7. "The text, the debtor being pressed for the repayment, &c." is to be understood as an exception to the text, "When a person aggrieved by another in a manner contrary to law or approved usage, &c."\*

Order of payment to different creditors.

8. Should there be many creditors of the same debtor, in what order he, the debtor, shall be made to pay by the king? On this the sage declares—

Brahmin first, king next, then other creditors in the order of receipt should be paid.

XLI. A debtor shall be forced to pay his creditors in the order in which the debts were contracted, but he is to pay a Brahmin first and after him the king.

In the same class, in the order of receipt. But in

9. If there are several creditors of the same class, the debtor shall be compelled by the king to pay in the order

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\* Vide Chap. I., Sec. II., text v., page 9.

in which the debts were contracted, but if the creditors are of different castes, &c., the payment is to be made in the order of Brahmin, &c. different classes, in the order of the classes.

10. When a creditor having failed to recover an acknowledged debt by the methods of mild truth, &c., recovers it through the assistance of the king, the fine to be imposed on the debtor, and the fees to be paid by the creditor (to the king,) are declared as follow;— Fine and fees for recovery of debt.

**XLII.** A debtor shall be forced to pay to the king ten per cent. of the amount proved against him; and the creditor, having received the sum due, must pay five out of every hundred.

11. The debtor shall be made to pay to the king ten per cent. of the amount proved, that is to say, the king will take a tenth part of the sum proved as a fine from the debtor. The creditor also, after having recovered the debt (awarded by the king) must pay five per cent. as fee. The meaning is, that the king may take from the creditor a twentieth part of the sum awarded and realized for the purpose of defraying the charges of judicature. Ten per cent. from debtor, and five per cent. from creditor.

12. In cases where a debt, denied by the debtor, is proved against him, the imposition of fine is sanctioned by the text. "In the case of a denial, when the claimant proves his allegation, &c."\* Imposition of fine when debt denied is proved.

13. The above rules have been laid down with respect to the solvent debtor, now the sage declares the rules applicable to insolvent debtors. The above rules to apply to solvent debtors.

**XLIII.** One of inferior caste, who is without means, may be compelled to labour in discharge of his debt; but a Brahmin, wanting means [to discharge Insolvent debtors of inferior caste, compelled to labour. Insolvent Brahmin to

\* Vide Chap. II., Sect. III., text xi., page 38.

pay according to his means.

his debt at once,] shall pay gradually in proportion to his income.

Brahmin creditor may compel debtors of inferior classes to labour. A Brahmin debtor to pay according to his means.

14. If the creditor is a Brahmin, &c., he may compel an insolvent debtor of inferior class, *i. e.*, *Kshatrya*, &c., to perform works suitable to his position for the realisation of the debt, without however interfering with the maintenance of his family. But a Brahmin "wanting means," that is insolvent, shall pay the debt gradually according to his means.

Inferior caste, and Brahmin include a person of equal & superior class respectively.

15. The mention of "one of inferior caste" (in the text) includes also (a person of) equal class. Consequently, a debtor of the same class shall be compelled to perform works suitable (to his class.) Likewise the mention of "Brahmin" includes person of superior class. Therefore the *Kshatrya* tribe, &c., if poor, must be compelled to pay gradually to the *Vyashya*, &c. (creditors) according to their income. This is clearly declared by *Menu*—"A debtor of equal or inferior class to the creditor should by labor put himself on a par with his creditor; but a debtor of a higher class must pay it by instalment. The meaning is, that (before the debt is discharged,) there is this disparity between them (*viz.*) that the one is creditor, and the other debtor, but the debt being discharged by means of labor, the disparity vanishes. Moreover—

If loan, not received, interest cease to run on delivery to third party.

XLIV. If one refuses to receive back the loan when it is offered to him, it is to be made over to some third party; from which time it will cease to carry interest.

Ditto. Interest to run if payment not made on demand even after deposit.

16. If the debtor offers to re-pay the loan, and the creditor, in the expectation of getting further interest, does not accept it, then on the money (lent) being deposited in the hands of a third person, the interest will cease to run from the

date of the deposit. Even on its being so deposited, interest will run as before if it is not paid on demand.

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### SECTION III.

#### *Debts payable by Whom and When.*

1. The author next expounds the topic as to what debts should be paid, when and by whom ?

XLV. A debt incurred by undivided kinsmen on account of the family shall be discharged by their heirs, should they die or leave the country.

An undivided kinsman's debt on account of the family, by the heir on his demise, &c.

2. If undivided kinsmen, or any of them contract a debt for the support of the family, the other co-parcener is bound to pay it. If he dies or remains long in a foreign country, his heirs must pay.

Do. by the other coparceners, or if dead or long absent, by the successors,

3. The exceptions to the rule relating to those by whom the debt is to be paid are declared as follow :—

Exceptions to the above.

XLVI. A woman is not bound to pay a debt which is incurred by her husband or by her son, nor is the father bound to pay the debt of his son unless it has been incurred on account of the family : and the same rule applies to the husband in the case of debts incurred by the wife.

Debt by husband, wife or son, not payable by them reciprocally unless incurred on account of the family.

4. A debt contracted by the husband is not required to be paid by a woman, *i. e.*, by the wife : nor is a debt contracted by the son required to be paid by a woman, *i. e.*, by the mother ; similarly (a debt) contracted by the son is not required to be paid by the father, nor is that contracted by the wife is required to be paid by the husband, “ unless it has been incurred on account of the family.” The last (proviso) is

Ditto ditto.

applicable to all the cases. Consequently a debt contracted on account of the family by any member whatever must be paid by the co-parcener. On his demise, it is to be paid by those who will inherit his property. This is what is declared above.\*

Debt payable  
by son and grand-  
son, exceptions.

5. That the debt shall be paid by the son and the grandson will be expounded hereafter. But the exceptions are declared beforehand.

Father's debt for  
spirituous liquors  
&c. not payable by  
the son.

XLVII. A son is not bound to pay, in this world, his father's debts if they are incurred for spirituous liquor, or for gratification of lust, or in gambling, nor is he bound to pay any unpaid fines or tolls; or idle gifts.

Ditto in detail.

6. A debt incurred on account of drinking spirituous liquors, or (a debt) incurred under the influence of lust, that is to say, for the sake of enjoying a woman, as well as debt caused by gambling, and what remains due as the balance of a fine or toll, as well as idle gifts promised to imposter, to bards, wrestlers and the like, for it is declared in *Smṛiti*—"Fruitless is a present given to an imposter, a bard, a wrestler, a quack, a flatterer, a knave, a fortune-teller, a spy or robber,"—such debts, (as enumerated above) incurred by the father, the son, &c. are not bound to pay to the wine-sellers and the rest. Here (in the text) by the use of the words "unpaid fines or tolls," it is not to be understood that when the whole of a fine or toll is due, it is required to be paid. (For) it is declared in the *Smṛiti* of *Ushana*,—"A fine or its balance, a toll or its balance, and what is not necessary (for life,) are not required to be paid by the son." *Gautama* has also said—"The debt incurred on account of spirituous liquors, or toll,

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\* *Sulapani* says that "father" is here illustrative, suggesting also his mother.

or gambling, or fine is not required to be paid by sons." The purport of this text is that all such (debts) do not fall on the son. Thus the debts which should not be paid have been enumerated.

7. "And the same rule applies to the husband in the case of debts incurred by the wife."\* The exceptions are declared as follow :—

The same, with a husband as regards wife's debts, exceptions.

XLVIII. As to debts contracted by the wives of herdsmen, distillers, players, washermen and hunters, the husbands are bound to pay; because their livelihood depends upon their wives.

Debts by wives of herdsmen, &c., payable by their husbands, as their maintenance depends upon their wives.

8. "Herdsmen," persons employed in tending cows, "distillers," manufacturers of spirituous liquors, "players," dancers &c., "washermen," men who color clothes by washing, "hunters" huntsmen. The debts contracted by the wives of all these, should be paid by their husbands; because their livelihood depends on the labors of such wives. "Because their livelihood depends upon their wives"—this reason being assigned, it is to be understood that others, whose livelihood depends on their wives, must pay the debts contracted by them (the wives.)

Do.—Herdsmen &c. defined. The same applicable to others whose livelihood depends upon their wives.

9. "A woman is not bound to pay a debt which is incurred by her husband." Exceptions to this are declared.

Exceptions to non-liability of a woman to pay her husband's debts.

XLIX. A debt acknowledged, one incurred by her jointly with her husband, and one incurred by herself (solely)—these must be paid by the wife; none other is required to be paid by her.

Wife to pay only the debts acknowledged, jointly incurred with her husband, or solely by her.

10. A wife employed by her husband, who is at the point of death or is likely to be absent abroad for a long time, to pay

Ditto ditto.

\* Vide Text xlvii.

his debt, must pay it if it was acknowledged by her : that which has been contracted by the wife jointly with her husband shall also be paid by her, if she is sonless, after the demise of her husband : and a debt which has been contracted by herself alone shall also be paid by her.

Mention of acknowledged debt not superfluous. Reasons given for the same.

11. Here a question may arise that in the three foregoing cases (the rule) "a debt acknowledged &c. must be paid by the wife" is superfluous, inasmuch as there can be no doubt about it. The answer is that "*The wife, the son and the slave*, these three are declared wealthless ; whatever they receive, is the property of him to whom they belong." By this text, these persons being without any property, it may be apprehended that the payment in the above cases (a debt acknowledged &c.) cannot be made. Consequently it is provided (by the text) "a debt acknowledged, &c." Let it not be said, however, that the above text declares the wealthlessness of the wife, &c., it merely indicates (their) dependency. This will be clearly stated in the Chapter on Partition.

Ditto as to the necessity of making mention of "none other need be paid by her."

12. (It may be argued here) that it is superfluous to say that "none other is required to be paid by her" because the express mention of one thing excludes the implication of others. To this the answer is, that from the rules contained in the text "A debt acknowledged, one incurred by her jointly with her husband," &c., "it follows as an exception that "none other," that is, such debts as are enumerated in the text "A son is not bound to pay, in this world, his father's debts if they are incurred for spirituous liquor, &c." be paid by the wife, even if they are acknowledged by her or contracted by her jointly with her husband.

The subject again resumed.

13. Again the author resumes the three subjects, viz., what debt should be paid, by whom they are to be paid, and when.

L. If a father has gone abroad, or died, or is subdued by calamity, his debt shall be paid by his sons and grandsons; on their denial, the debt must be proved by witnesses.

. Father's debts, payable by sons and grandsons, if he die, go abroad or be subdued by calamity.—To be proved, if denied.

14. If the father, without paying a debt which is due, dies or goes to a distant country, or is afflicted with an incurable disease &c, then his debts must be paid by his son and grandson (son's son) by reason of their sonship and grandsonship, even if no assets of the father or of the grandfather having been left. (The liability will be) in this order. In default of father, the son, and in default of son, the son's son (must pay.) In case of denial by the son or son's son, the debt being proved by the testimony of witnesses &c., must be paid by them.

Ditto ditto.

15. By the Text "If a father has gone abroad" the payment is merely enjoined, but the specific time (for payment) as declared by *Nāreḍa* is to be observed. "The father, or, (if the family be undivided) the uncle or the elder brother, having gone abroad, the son shall not be forced to discharge the debt until twenty years have elapsed.

Son, not to be forced to pay the debt of father &c., who has gone abroad, until twenty years have elapsed.

16. If the father be dead, the son if a minor need not pay, but if a major, he is (bound) to pay. The period of majority has been also stated by him (*Nāreḍa*.) "A boy, up to the eighth year, is considered like a child in the womb, and up to the sixteenth year he is *Bala* (minor) and also termed *Pouganda*; after this period he is major, and becomes independent if (his) father and mother are not alive." Although a minor becomes independent after his father's death, he is not bound to pay the debt (of his father) as it is declared. "A minor, even if independent, is not required to pay the debt; since a major alone is truly independent, and majority depends on qualification and age.

If the father be dead, the major to pay, and not the minor.—Majority commences after the sixteenth year, and consists in qualification & age.



Seizure and citation of a minor prohibited. "Son born" means a son who is capable of understanding the judicial proceedings.

17. A prohibition does also appear to the seizure and citation (of a minor) under the following text of *Smṛiti*. "A minor, a messenger, a person ready to make a gift, and one engaged in performing religious acts and one in imminent danger are not to be seized: and the king must not summon them." In the text—"Therefore the son born, without minding his own interest, must carefully release his father from the debt, so that he may not go to hell,"—the phrase "the son born" is to be explained as the son, who is capable of understanding judicial proceedings. But in the case of *Shradh*, a minor is competent to perform it; because *Goutama Smṛiti* provides, that ("A minor) shall not utter the *Brahma*\* except at the time of *Shradh*."

"Sons or their sons" being used in the plural number, they shall pay the debt according to their respective shares, or that son alone who is of superior qualification.

"Death" suggests also retirement from worldly affair and long absence.

18. (In the text under consideration) the plural number has been used as "sons or sons' sons, consequently if there are many sons if divided, they must pay the debt, according to their respective shares. It appears from this, that if they are undivided, and have a joint concern, he, amongst them who is the head or chief, is bound to pay. Likewise *Náreka* declares—"Therefore after the father's† death, his sons, whether divided or joint, must discharge his debt in proportion to their shares; or else the son who has undertaken the burden."

Sons to pay the father's debts both principal and

19. In the text (L) although it is indiscriminately said that "his debt shall be paid by his sons, or sons' sons;" still this

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\* "*Brahma* means *Gayatri*, i. e.—the mysterious prayer to the Supreme Being which none but the twice-born classes can utter after investiture of sacred thread.

† The mention of "death" in this text, suggests also retirement from worldly affairs and long absence, as is expressly stated in the rule of *Vishnu*, "If he who has contracted the debt, should die, or become a religious anchorite, or remain abroad for twenty years, the debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will."

distinction is to be observed that as the father pays (the debt) with interest, so the son shall pay it, but the grandson (son's son) shall pay the principal only, and not the interest. This is declared in the text of *Vrihaspati*—"The sons must pay the debt of their father, when proved, as if it were their own, the son's son must pay the debt of his grandfather to an equal amount, and his son, (or the great-grandson) shall not be compelled to pay it at all." Here the term "when proved" is mentioned without any specification, and in the text (L.) the words "proved by witnesses" occur. These two indicate that it is to be proved by evidence (in general.) "Equal amount" means an amount equal to the principal; this amount only is required to be paid, and not the interest. "His son," the grandson's son, shall not be forced to pay, if he has not got any assets. This will be clearly declared in the next text (to be quoted from the author.)

interest, grand-sons, the principal only, and grandson's sons not to pay at all if he has left no assets.

20. The debtor, his son, and grandson, these three are said to be the proper persons to discharge the debt, and the order (of their liability) also, when all of them are present, has been shewn. Now the author expounds the order, (of liability) amongst other persons who are bound to pay (the debt.)

The debtor, his son and grandson are the proper persons to pay, and the order of their liability shown. The order of the liability of others next propounded.

LIa. He, who receives (heritage), shall pay the debts of a proprietor who has died without leaving a (capable) son: so, he who takes the widow; also that son whose paternal estate has not devolved upon other persons.\*

He who receives the estate, takes the widow, also that son whose paternal estate he has appropriated, shall pay the debts of one who died leaving no son.

\* The original text appears as follows :—

अक्षय्याह ऋणं दास्यो योषिद्व्याहस्तथैव च ।

पुत्रोन्मत्तान्नितद्रव्यः पुत्रहीनस्य ऋक्षिणः ॥ ५१ ॥

He who receives the estate, takes the widow, also that capable son whose paternal estate no other has taken, or in his default who takes the widow, shall pay the debt

LIb. He, who receives the estate, shall pay the debts (of the proprietor); so, he who takes the widow; also that (incapable) son whose paternal estate has not devolved upon any other person; in default of such son, he who takes the (wealthless and childless) widow, shall pay the debts.

He who receives the estate, takes the widow, also that incapable son whose paternal estate no other has taken, shall pay the debts to the creditor, or if he be dead, to his successors.

LIc. He, who receives the estate, shall pay the debts (of the proprietor); so, he who takes the widow; also that (incapable) son whose paternal estate has not been appropriated by any other person. (These debts shall be paid to the creditor.) If he (the creditor) has left no son to his successors.

*Ricktha*, (heritage) means the thing which belonged to another, but subsequently becomes one's own property without purchase, &c. The sense in which the word *ricktha* is used.

21. *Ricktha* (heritage) means a thing which belonged to one man, but has subsequently become the property of another otherwise than by purchase, &c. The person, who receives the estate by partition is to be compelled to pay the debt. It is meant by this, that he who takes the property as *Ricktha* (heritage) from a proprietor, must pay the debt contracted by him (the proprietor,) but not the thief, &c. should (pay the debt); so also a person, who has taken the widow of another, is bound

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The commentator has explained this text in three different ways. According to the peculiar grammatical structure of the Sanskrit language, and the different significations of the word *Ricktha* used in the last line, one translation of the *sloka* cannot convey those ideas; therefore, three different translations of this *sloka* are given denoting them by LIa., LIb. and LIc.

The difference of construction occurs in the following manner:—The phrase *Putrahinasya Rickthina* in the last line, if connected with the first line, will give to the *sloka* the meaning which is given in the translation marked LIa.

If it stands alone unconnected with any thing preceding, and the word *Ricktha* in the phrase *Putrahinasya Rickthina* be construed to mean “a widow wealthless and childless,” then the proper rendering of the *sloka* will be as given in LIb. The third version of the *sloka* as given in LIc. arises, if the word *Rickthina* be considered to signify “persons who inherit.”

to pay the debt contracted by the latter. As the widow is not a property capable of division, so she could not be included in the term *Ricktha*, consequently she has been separately mentioned; so also the son, whose father and mother's assets are not held by another, must pay the debt of the proprietor having no capable son. Where all of them are present the order of payment mentioned in the text under consideration is as follows:—(Firstly,) the person who has received the (*Ricktha*) heritage; on failure of him, he who has taken the widow; and after him the son (under the circumstances mentioned above.)

22. Here the following questions arise—(1.) That the co-existence of all of them is not probable: because according to the text,—“Neither brothers, nor parents, but sons inherit their father's property,” if a son is alive, no one can take the estate. (2.) It is also not probable, that there will be a person who can take a widow, since the *Smriti* declares—“It is no where provided that there can be another husband of a chaste woman.” (3.) Similarly it is superfluous (to say) that the son will be compelled to pay the debt, since it has been already stated that “his debt shall be paid by sons and grandsons.”\* (4.) The qualification regarding the very son “whose paternal estate has not devolved upon other persons” is useless, because if a son be alive, there is no probability of his father's estate being taken by another. Even if it be (under any circumstances) probable, the provision in the text in question to the effect, “he who has received the *Ricktha* &c” makes it useless. (5.) It should not have been said, “of a proprietor who has died without leaving a capable son,” since it is an established rule, that even if the son be alive, still the person, who has received the estate, should pay the debt; under such circumstances, it is self-evident that where

Doubts raised:

\* Vide text of *Yajnyawalkya*, No. I, p. 109.

there is no son, the debt shall be necessarily paid by the person, who has received the estate.

Certain questions arise as to the existence of all of them not being probable.

23. It is answered thus—(1.) There may be other heir notwithstanding the existence of a son, because the son, in the event of his being impotent, (born) blind, deaf and the like, is incompetent to succeed. It will be subsequently declared—by enumerating persons impotent &c., that they are excluded from participation (as heirs,) but are entitled to maintenance. *Goutama* has also said—“Some are of opinion that even the son, born of a woman of equal class, is not entitled to inherit if he be of a vicious character.” Consequently, notwithstanding the existence of sons who are impotent &c., or son born of a woman of equal class but who is of a vicious character, the uncle or his son &c. inherits the estate.—(2.) Although no one can probably take another’s widow, on account of its being contrary to the dictates of the *Shashtra*, yet if, by disregarding the prohibition, a person takes (such) widow as the last of the four sorts of wanton women, or the first of the three sorts of remarried virgins—he is liable to pay the debt contracted by her former husband. As it is declared by *Náreda*—“There are seven other kinds of women (widows), who are enumerated (below) according to their respective order. Of these, three are virgin widows remarried, and four wanton women. A virgin whose *valva* has not opened, but who is polluted by (nominal) marriage only, if remarried, is called virgin widow remarried of the first kind. If guardians, according to the rules and customs of the country, give to another, a woman who has (already) commenced to have sexual intercourse, she is called a remarried virgin widow of the second kind. If, in the absence of the husband’s brother, a woman is given by her friends to a kinsman of equal class, she is called a remarried virgin widow of the third kind. If, during the life-time of her husband, a woman, who has had child or otherwise lives with another in

adultery through lust, she is called the first kind of wanton woman. If a woman, leaving the husband of her childhood, elopes with another man, and if she again returns to the house of her husband, she is called wanton woman of the second description. If, after the death of her husband, a woman notwithstanding their offer, abandons her husband's brothers and others, and leads a profligate life with another person through lust, she is called the third kind of wanton woman. If a woman, coming from another country, or purchased by wealth, or pressed by hunger and thirst, offers herself by saying "I am yours," she is called the fourth kind of wanton woman. The debts, contracted by the husband of the last kind of the wanton women, or the first kind of remarried virgin widows, shall be paid by him who takes them." Likewise another kind of persons taking a widow and therefore bound to pay the debt has also been shown by him (*Náreda*).—"If a woman, with immense wealth or with children, follows another man, he shall either pay the debt of her husband, or give her up in the same state." "With immense wealth," *i. e.*, with wealth of great magnitude. Moreover—"He who takes the widow of a deceased, having no son and wealth, must bear her husband's debt, since she is considered his only wealth."—(3.) The repetition of the word son (in the text) has been used to shew the order (of the persons liable to pay.)—(4.) That the provision, viz, "whose paternal estate has not devolved upon other persons" has been set forth in the text to indicate, that where there are no assets left, of the many sons, he, who would have been entitled to participation (if there had been assets) is bound to pay the debt, not a blind (son) and the like, who are incompetent (to participate.)—(5.) By the words—"Of a proprietor who has died without leaving a (capable) son" it is intended to indicate that if the great-grandson &c. of a proprietor who had left neither son nor grandson, partake of any assets, then they shall pay the debt, otherwise not. It has been (already) declared that a son and grandson must pay the debt, even if

they do not participate in any assets, as *Náreda* declares — “An undisputed debt of the grandfather, which has been successively due by him and his sons, but has remained undischarged by them, shall be paid by his grandsons ; but it is not recoverable from a person who is fourth (in descent from the debtor.)” Now every thing is reconciled.

The text is explained in another way, the word *Ricktha* meaning widow.

24. Or it (the text) may be explained in this way.\* It has been construed to mean that, in default of the person who takes the widow, the son shall pay. But the phrase in the text (*Putrahinasya Rickthina*) that is, the person, who takes the widow of one, who has left no son—may be construed to mean that in default of him (son,) the person who takes the widow, should pay (the debt.) Because the word *Ricktha* means widow. It is declared in the *Smṛiti*—That “she (widow) is considered his only wealth.” And “he who takes his widow takes his wealth.”

Questions as to the inconsistency of the two constructions of the text.

25. Here a question arises that these two (constructions of the text) are inconsistent with each other ; because (in the one case it is said that) the son shall pay the debt in default of the person who takes the widow ; and (in the other case it is construed to mean that) the person who takes the widow shall pay the debt in default of the son. (It follows therefore that) neither of them is to pay, where both exist. (It is answered thus)—There is no inconsistency, because (the meaning is that) the son shall be made to pay in default of the person who takes the last (kind) of the (wanton women,) *Swairini*, or the first (kind) of the (virgin-widows remarried,) *Punarbhū*, or a widow with immense wealth and children ; and in default of the son, the person who takes the wealthless and childless widow, shall be made to pay (the debt.) This has been positively declared by *Náreda*. “One who takes

Discrepancies reconciled.

the assets, one who takes the widow, and the son, of these three, the person who takes the assets, is to bear the debt. If neither the person who took the widow, nor the person who received the assets, are in existence, the son (must pay), and if the person who received the assets, and the son are not in existence, the person who takes the widow (must pay.) (Its meaning is that,) when the three are co-existent, viz., the person who has received the assets, one who has taken the widow, and the son—he who received the assets must pay the debt. If (of the above three) the person who has received the assets and one who has taken the widow are not in existence, the son alone is to bear the debt. If (of the above three) the person who has received the assets and the son are not existing, the person who takes the widow is to bear the debt. The seeming inconsistencies, namely, that in the absence of the person who has received the widow, the son is to bear the debt, and in the absence of the son, the person who takes the widow (must pay the debt)—is to be reconciled in the manner mentioned above.

26. There may be another interpretation of the phrase "*Putrahinasya Rickthina*." The person who receives the assets, one who takes the widow, and the son, these three are (declared in the text) to pay the debt, but to whom? (is the question) the implied answer is, that the debt should be paid to the creditor (himself.) If he (the creditor) be not alive, then to his son, &c. In default of the son and the rest, to whom shall it be paid? It is declared in answer to *Putrahinasya Rickthina* that is to *Rickthe*—kinsman who is entitled to inherit the property of the creditor who died (*Putrahina*) without son and other descendants. It is likewise (declared) by *Nāreda*. "The thing which is due to a Brahmin or to his descendants, if he or his descendants are not alive, shall be made over to his (*Sakullas*) remote kinsmen, in default of them to his (*Bandhus*) cognates." In continuation of this text it is said "If there be

Another interpretation of the phrase "*Putrahinasya Rickthina*."



neither remote kinsmen, agnates nor cognates, then (the thing) shall be made over to other Brahmins, in default of them, it shall be thrown into water.

#### SECTION IV.

##### *On Sureties, &c.*

1. The legislator next lays down certain prohibitions in connection (with the subject) of the prohibition of receiving loans from particular persons.

Brothers, husband and wife, fathers and son unless separated, prohibited to become surety for, to be indebted to and to give evidence against, one another.

*Menu* and other sages declare the invalidity thereof of such indebtedness, &c. The reasons for such opinion given.

LII. To become surety, to be indebted, and to give evidence, is unlawful between brothers, between husband and wife, or between father and son, except where they are separated in property.

2. Before the partition of property takes place, to become surety, to be indebted, and to give evidence between brothers, husband and wife, or between father and son, is declared invalid by *Menu* and other sages. On the contrary, they have prohibited them; since if to become surety and to give evidence be allowed, they may ultimately cause a loss to the (common) property, and if indebtedness (between them) be allowed, it must be paid off (out of the joint fund).

The rule applicable where there is no consent, but not where there is consent. After partition, no consent is necessary.

3. The rule (mentioned above) is applicable, where there is no consent of each other. But if there be consent; "to become surety, &c." (between brothers &c.) are allowed even if they be joint. (But) after the partition (suretiship &c.) are allowed although there be no consent.

Questions as to the consistency of the prohibition regarding the Suretiship &c. between husband

4. Here a question arises—How is the prohibition as to suretiship &c. between husband and wife before partition consistent? Because the qualification "except where they are separated in property" (in the text) is meaningless, for

there can be no partition between them. The absence of partition is declared by *Apastamba*.—"There is no partition (of property) between the husband and the wife." (Answered.) It is true that there is no division of the ceremonies performed with religious fire under *Shruti* and *Smriti*, or of the benefits derived by the performance of those ceremonies, but this is not true of all acts or things. It is thus that (the sage *Apastamba*) after premising that "there is no partition between the husband and wife" assigns the (following) reason for the interrogation—why is there no division?—"since by marriage, unity accrues in religious ceremonies as well as in benefits and also in "the receipt of things."\* Because from the date of the marriage unity in (religious) acts is ordained (by the sacred text.) "The husband and wife shall (jointly) consecrate the fire." Therefore the joint right to consecrate the fire being established, unity in the ceremonies performed with such consecrated fire, accrues as a matter of course. Likewise by the (following) text of the *Smriti*—"The ceremonies according to *Smriti* (are to be performed) with the nuptial fire"—the joint right is surely (implied) in the ceremonies performed with the nuptial fire. Consequently it follows that the husband and wife acquire a separate right to do such acts as the digging of tank &c. which are not connected with the two kinds of fires.

and wife before partition, and the said questions answered.

5. Similarly the aforesaid joint right of the husband and wife in the heavenly enjoyment &c. derived from religious ceremonies, is ordained (by the sacred text.) "They shall commence (to create) a permanent light in heaven &c." By this it is to be understood, that in whatever religious ceremonies, the joint right (of the husband and wife) is (ordained), en-

The wife has also ownership in the husband's property.

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\* The expression "receipt of things" is a general one. It may mean an acquisition by gift or any other way. It may also mean appropriation of things.

joyment of the benefits derived from their performance is to be considered joint. But it must not be understood that there is joint interest even in the benefits derived from the digging of a tank &c. made with the consent of the husband.

Question as to separation or unity of interest, of husband and wife, and its answer.

6. Here a question arises—Although there is a (separate) ownership in the property, still the unity of interest “in receipt of things” is declared; because during the absence of the husband, (the guilt of) theft is not incurred by (the wife making) necessary gifts. (Answered.) It is true that the ownership in the property is shown by this (text), but not the absence of partition (between husband and wife); because after declaring (in the text) “in receipt of things” its reason is assigned (thus.) Since *Menu* and others do not hold that (the guilt of) theft is incurred by (the wife making) necessary gifts, *i. e.*, feeding guests and giving alms, &c., consequently she also has ownership in the property, otherwise it would have been theft (on her part.) Therefore by the choice of the husband, but not of the wife, there may be partition between them, as it will be said hereafter. “When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those sons.\*

7. The sage next proceeds to explain suretiship.

LIII. Suretiship is enjoined for appearance, for confidence, and for payment. On failure of either of the first two, the surety (himself) in each case shall pay; on that of the third, his sons also must pay.

Three purposes for which suretiship is enjoined,

8. The engagement with a third person for confidence called suretiship. It is divided into three kinds according

\* See text No. CXV. ११११११११

to circumstances. They are as follow,—(First.) For appearance (that is to say)—“I will produce him when (his) appearance will be required.” (Second.) For confidence, *i. e.*, give money to such a person on my confidence, he will not deceive you; because he is the son of such a one, and he owns a very good village, consisting of lands nearly the whole of which is fertile. (Third.) For payment, *i. e.*, “if he do not pay, I will pay the amount.” The phrase “Suretiship is enjoined” is to be connected with each of the above three cases. “If there be a failure” that is, if there be non-appearance or breach of contract. “The first two &c.,” *i. e.*, Sureties for appearance and confidence shall be compelled by the king to pay the full amount to the creditor. “Of the third,” that is, of the surety for payment, his sons also shall be compelled to pay. (By the phrase) “If there be a failure” (it is implied) that if the debtor does not repay the debt through chicanery or on account of his insolvency. By the mention of “his sons,” it is meant that, the sons of the first two are not to be compelled to pay. Likewise by the mention of “the sons” (*only*), it is implied that the grandsons cannot be compelled to pay.

The sage, to clear this, declares—

LIV. If a surety for appearance or for confidence die, the sons have not to pay; in the case of a surety for payment the sons have to pay.

Declaration of the sage, as to the son's non-liability for appearance or confidence, and his liability for payment.

9. If the surety for appearance or that for confidence is dead, their sons need not pay their father's debt incurred on account of (such) suretiship; but if the person, who binds himself for the payment departs this world, his sons must pay, but not his grandsons.

Ditto.

10. They (sons) ought to pay the principal, but not the interest, according to the text of *Vyasa*. “The son of a son

Sons should pay the principal with interest, grand-

sons without interest, but their sons are not bound to pay.

shall (in general) pay the debt of his grandfather, but the son (only) shall pay the debt of his father incurred by his becoming a surety, (and both of them) without interest; but it is clearly settled that their sons are not bound to pay." (The meaning is that,) the grandson must pay the exact amount of his grandfather's debt other than that incurred for his becoming surety, and not the interest. Likewise the son shall pay an amount equal to his father's debt incurred by his becoming security, without any interest. "Their sons," means sons of a grandson and son, *i. e.*, the great-grandson and grandson, if they do not inherit any property, need not respectively pay the general debt and the debt incurred by becoming surety.

The text of *Smṛiti* explained as to the son being liable to pay the principal and not interest where there is assets.

11. "Should the debtor be insolvent, and the surety have assets the principal only must be paid, and it is not required to pay the interest." This *Smṛiti* is to be explained thus—If a surety dies possessed of assets, then his son shall pay only the principal but not the interest.

In case of pledge being taken for the suretyship for appearance, the son must pay the debt incurred from the property taken in pledge.

12. If the surety for appearance or for confidence bind himself after taking sufficient pledge, then his sons also must pay the debt incurred by becoming surety, from the property taken in pledge. As *Calyagana* declares,—“Should a man become surety for the appearance of a debtor from whom he had received a pledge (as his own security,) his son, on the demise of his father, may be compelled to pay the debt from the pledged property.” Here security for appearance includes a security for confidence. “Demise of father” means when the father is dead or gone to a distant country.

The mode of enforcement where there are many sureties.

13. If there be many sureties, how shall the payment be enforced? on this (subject) it is declared.

Ditto, according to their respective liabilities,

LV. If there are several sureties, they shall pay the debt according to their respective liabilities. If

all stand in the same shade, they shall be made (severally) to pay at the option of the creditor.

&c.—Creditor has the option, when they all stand under the same shade.

14. If there are two or more sureties in one transaction, then they shall pay their proportionate shares of the debt by division. The words "If they stand in the same shade," mean if each of the sureties severally bear the resemblance of the debtor, that is, if the sureties for the payment have severally bound themselves to pay the whole debt, like the debtor, then the payment can be enforced from any one of them, as the creditor pleases. This rule also applies to a surety for appearance and confidence, consequently the creditor can, selecting any one of the sureties, who is able enough to discharge the debt, request him to pay his whole debt, and such surety must accordingly pay the whole debt, but not in his proportionate share.

Ditto, in proportion of their share of the debt by division. Ditto when they all stand under the same shade.

15. If any one of the sureties, liable to pay the whole debt, goes to a distant country and his son be at home, then he (the son) may be made to pay the whole debt (with interest) at the option of the creditor. If any one of such sureties dies, then his son ought to pay his father's share (of the debt) without interest. Similarly *Catyayana* declares—"If any one of the sureties, who have undertaken (to pay) the entire debt, be absent abroad, his son ought to pay the whole debt; but if he dies, the son ought to pay only the proportionate share" of his father (without interest.)

Liability of the son of a surety, who goes abroad or dies.

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## SECTION V.

### *On Contribution.*

1. The sage, having laid down the rules for the payment of the debt incurred by becoming a surety, expounds the subject of reimbursement of the sum paid by the surety.

Liability of the debtor to the surety who has been publicly compelled to pay.

LVI. If the surety be compelled publicly to pay the debt due to the creditor, the debtor shall be forced to reimburse him double the amount paid.

Interpretation.

2. When the surety or his son being pressed by the creditor should be compelled by the king to pay the debt publicly, that is in the presence of all persons, the (principal) debtor shall be made to repay double the amount to the surety. The debt (in question) must not be paid (without any pressure by the surety) *i. e.*, by (voluntarily) appearing personally with the hope of getting double the amount. As *Náreda* declares—"If the surety, harassed by the creditor, discharge the debt, the debtor shall be made to pay twice as much to the surety."

Payment to be immediate.

3. The above payment is to be made immediately without waiting for a particular time, such is the implied force of the text being laid down separately. This rule applies to gold.

Argument of the opponent.

4. Here a question arises. The text contemplates only (the payment of) twice the amount (without reference to time.) This may be applied consistently with and not in contradiction to the rule regarding payment by the efflux of (particular) time as propounded previously, just as in the case of the (enjoined) sacrifice to be performed at the birth of a child, which is observed without any prejudice to the rule regarding impurity.\* Moreover, if it be said to imply immediate payment with

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\* This argument of the commentator will not be understood by reader without the following explanation—the reasoning is this—that it is enjoined in the *Šastras* that on the birth of a child a ceremony (called *Pulrestī*) is to be performed.—Literally, it means that this ceremony is to be performed immediately on the birth of a child.—But it is also laid down in the *Šastras* that on the birth of a child, the father, and the mother &c. contract impurity for a certain number of days, and are therefore incapable of performing any religious ceremony. Therefore to obviate inconsistency, the first rule is construed to mean that the aforesaid ceremony is to be performed on the expiration of the period of impurity.

interest, then in the case of female cattle, the payment of the principal only can possibly take place, because there is no possibility of their offspring being born immediately. (Answered.) This is wrong. If (the text)—“On clothes, grain and precious metals, it (interest) may be in order four times, three times and twice as much as (the principal lent),”\* is sufficient to make the debt (on account of suretiship) double &c. by the efflux of time, then the present text providing for the payment of double the amount becomes (quite) useless and in the case of female cattle if there be no offspring after the efflux of (a particular) time, then they themselves only are to be given back. If the surety, after the payment of the thing, does not find the debtor for a time, then there may be offspring. Or it may be the case that (the debtor) shall make over the female cattle with their offspring which was begotten before. Consequently, the above argument is of no consequence.

Refuted.

5. It is argued (again) that suretiship is entered through friendship, consequently any thing given by a surety, is nothing but a payment through friendship. There cannot be any interest on such a payment, unless a demand be made, as it is declared “Whatever is given through friendship, does not carry interest without demand. If after demand, the payment is not made it will bear interest five per cent.” Therefore although there be no demand, the payment through friendship will increase from the date of the payment by efflux of time as much as the principal. This is the object of this text. (Answered.) This is also wrong. Because this meaning does not appear from the text. It is only shown by it (the text) that double the amount is to be repaid. Consequently it has been very well explained, that the meaning of the above text is that double the amount should be repaid without reference to any particular period.

Argument of the opponent. Refuted.

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\* Vide text XXXIX.



Exceptions to this rule following.

6. The payment of double the amount is provided (by the above text.) The exceptions to it are declared as follows :—

In the case of female cattle, &c.

LVII. Female cattle, with their offspring, grains three-fold, clothes four-fold, and liquids eight-fold, shall be given.

Surety to be reimbursed with highest rate of interest.

7. As the precious metals are to be paid two-fold, so female cattle, &c., shall be delivered with their increase as provided in a previous text which has been already explained.\* The implied sense (of this text) is that if a surety is made to pay any thing (to the creditor) the debtor must immediately make it good (to the surety) with the highest rate of interest (as provided above) without reference to a particular period of time.

Three fortnights' time to be allowed to the surety to produce the debtor.

8. When a surety for appearance is unable to produce the debtor at the fixed time, three fortnights' time should be allowed to find him (the debtor) out.

If the debtor be not produced within that time the surety must pay.

9. If within that time, the surety can produce the debtor, he is to be released, otherwise he is to be compelled to pay the money due (from the debtor), as declared by *Catyaiana*. "After the stipulated period, three fortnights' time should be allowed to find out the absent (debtor). If he can produce him within that period, the surety should be released. If on the expiration of that period, the surety cannot produce him, he should be compelled to pay the promised sum. This rule applies also, when (the debtor) is dead."

Special rules with regard to sureties.

10. (*Catyaiana*) has also pointed out certain special rules with regard to sureties. "Neither the master (of a lender), nor his (professed) enemy, nor an agent of his master, nor a

\* Vide text XXXIX.

prisoner, nor a convict, nor one who is cursed, nor a coheir,\* nor an intimate friend, nor hermits, nor a servant of the king, nor a religious anchoret, nor a person who is unable to satisfy the demand of the creditor, or to pay an equal amount of fine to the king, nor one whose father is alive, nor one who is self-willed, nor a man who is not well known, should ever be accepted as a surety for any transaction." Hermit or perpetual students in theology.

## SECTION VI.

### *Pledges, Hypothecation and Mortgages.*

1. There are two grounds for confidence in the investment of money, first, a surety, second, a pledge, as it is said by *Nāreḍa*—"a surety and a pledge are two grounds of confidence in it (the investment)." Of these (two), the subject of suretiship has been already explained.

Surety and pledge, the two grounds of confidence in investment.

2. The legislator is now going to expound the rule relating to pledges. Whatever is kept in the possession of the creditor by the debtor for the confidence of the former, is called a pledge. It is of two kinds, namely, one for a stipulated period, the other for an indefinite length of time. Each of these two again is sub-divided into two kinds. A pledge for custody only and for use, as is declared by *Nāreḍa*—"That, to which a (secondary) title is created is a pledge. It is of two kinds, that which is to be given up after a fixed time, and that which is to be retained until the debt is satisfied.

Pledge defined.

\* "Coheir" "a joint tenant with the creditor or debtor."--*Ratnacara*. The author of "*Ratnacara*" reads *Antavasina* instead of *Alyantarasina*. The meaning of the former is pupils, literally apprentices; disciples. "A servant of the king," means one employed by the king, that is, his minister and the rest. "One who is self-willed, i. e., one who is solely guided by own will and not by a consideration of circumstances: consequently his incapacity for civil affairs is the objection against him."

Explanation of  
the text of *Nareda*  
quoted above.

It is again declared to be of two sorts, *i. e.*, for custody and for use." "To be given up after a fixed period" (as, for instance, when the pledgee says) at the time of delivery "at such a time, namely, on the date of the ceremony of illumination, &c., this pledge will be redeemed by me, otherwise it will become your absolute property." The pledge must be redeemed within the time thus fixed. "To be retained until the debt is satisfied" *i. e.*, so long as the payment is not made, the property is to be kept in the custody of the creditor without any reference to time. This is a pledge for the redemption of which no time is fixed "For custody" means that the thing pledged is to be kept (but not enjoyed.)

3. Now the legislator expounds the difference between the four sorts of pledges described above.

Difference be-  
tween the four  
sorts of pledge.  
Explained.

LVIII. "The pledge is forfeited," if it is not redeemed when the debt is doubled. The pledge for a stipulated period is lost on the expiration of that period. The pledge for use is never forfeited.

If the pledge  
is not redeemed  
when the debt has  
doubled, it is for-  
feited.

4. If the pledge is not redeemed when the debt has doubled itself by the accumulation of interest, the right of the debtor in the pledged property ceases and becomes vested in the pledgee.

A pledge for a  
stipulated period  
is forfeited at the  
expiration of the  
time.

5. "A pledge for a stipulated period" is forfeited, only on the expiration of the time within which it was agreed to be reclaimed, whether this happens before or after the debt has become double.

A pledge for  
use is never for-  
feited.

6. "Pledge for use" means a field or garden, &c., the produce of which is to be enjoyed by the pledgee. This is never forfeited.

7. "The pledge for a stipulated period is lost on the expiration of that period." Shows that pledges for a stipulated period, whether for custody or for use, are forfeited on the expiration of that period, and the portion, "a pledge for use is ever forfeited." Shows that a pledge for use for which no time has been fixed, is never forfeited. The remaining portion—"a pledge is forfeited," is to be applied only to a pledge for custody for an unlimited period.

How pledges are forfeited and what sorts of pledges cannot be forfeited.

8. Although forfeiture is contemplated, when the debt is doubled, and when the fixed period has expired, (the creditor) should wait for fourteen days under the text of *Vrihaspati*. "Gold having doubled, and the stipulated period having expired, the creditor becomes owner of the pledge after the lapse of fourteen days. If the debtor repays the amount within that time, he shall get back the pledge."

When does the creditor become absolutely entitled to the pledged property.

9. A question arises that "the pledge is forfeited," is not consistent; because there is neither a gift nor sale &c. by which the right of the debtor can cease; neither there is an acceptance nor purchase, &c. by which the right of the creditor can accrue; and that it is also contrary to the text of *Menu*.—"However long the time may be, neither an assignment nor a sale of a pledge, can be made." "However long the time may be," means, for whatever length of time the pledge has been (in the custody of the pledgee.) "Assignment," pledge to a third person by the pledgee. Hence, by the prohibition of assignment and sale, it is evident that the right of the pledgee does not accrue. Answered. It is a well known popular notion that a transfer by pledge is a qualified cause of the loss of right; and acceptance of the pledge, a qualified cause of the creation of right. Consequently after the debt has doubled, and the stipulated time has arrived, the right to satisfy the debt ceases, and by virtue of this text the debtor's right is lost for ever, and that of the creditor accrues. Nor is it contrary to the text

Apparent inconsistency of the above doctrine with the text of *Menu* and with the principle of the law of sale or of gift explained.

of *Menu*, “after no length of time neither an assignment nor a sale of the pledge can be made.” For this is said by the sage (*Menu*) on the subject of a pledge for use, as he commences by saying—“If he take a beneficial pledge, he must have no other interest on the loan.”

True meaning  
of the text of  
*Menu* is not dif-  
ferent.

10. By the prohibition (in the text of *Menu*) against an assignment or sale of a pledge for use, even after a great length of time, it is implied, that, the pledgee does not acquire any right. It is also said here—“A pledge for use is ever forfeited.” With regard to a pledge for custody, *Menu* has dealt with it separately,—“No pledge is to be used by force; the pawnee so using it, must give up his whole interest.” Here also it will be stated—“If a pledge for custody only be used, (the debt) shall bear no interest.” The passage “a pledge is forfeited, if it be not redeemed when the debt has doubled,” refers only to a pledge for custody, and so there is no inconsistency.

Moreover—

When the creditor or pledgee is not entitled to interest and when he is to make good the pledged property.

LIX. If a pledge for custody only be used, (the debt) shall bear no interest, as well as in cases in which a pledge for use has been damaged; a pledge spoiled or destroyed otherwise than by the acts of God or of the King, shall be made good (by the creditor.)

The debt shall bear no interest if the pledgee uses copper vessels &c. kept in pledge for custody, and also if the pledgee renders by use unfit a thing or an animal in the case of a pledge for use.

11. If copper vessels, &c. kept in pledge for custody be used, then (the debt) shall bear no interest. Even if the use bear an insignificant proportion to the amount of interest due, still the latter must be given up, because (by the unauthorised use) of the thing pledged, the contract is broken; similarly in the case of a pledge for use with interest, if (the subject of) the pledge be a bullock or a copper vessel, &c., by the use of which benefit is derived by the pledgee, there shall be no interest if the thing pledged is rendered unfit for use.

12. The copper vessels &c. being "spoiled"—*i. e.*—rendered unserviceable by perforation or breakage, must be returned to the debtor after being restored to its former condition by repair. If a pledge for custody only becomes unserviceable (by the negligence of the pledgee,) it must be made good by repair. But if it is used, the interest must also be forfeited.

A pledged property if rendered unserviceable by negligence must be restored to its former condition and there shall also be no interest if the property has been used.

13. If a pledge for use is spoiled, then, either it should be returned after being restored to its former condition, or, in case there be any stipulation for interest, it is to be given up. "Destroyed," totally lost. This also must be made good by payment of value. The pledgee, on the payment of the value, gets his principal with interest. If he fails to pay the value, then the principal is to be forfeited, as it is evident from the text of *Nareda*. "The principal (debt) shall be lost, if the pledge is destroyed otherwise than by acts of God and of the King."

A pledged property if destroyed must be made good by payment of the value thereof.

Debt not recoverable if the pledge is destroyed otherwise than by an act of God or of the King.

14. "Acts of God," *i. e.*—fire, inundation and revolution and the like. Acts of the king must not be in consequence of the (pledgee's) own fault. On the destruction of the pledge, caused by acts of God and of the king, the debtor must either repay the principal with interest or he must give another pledge in lieu of the one destroyed, as it is said,—“The (mortgaged) land being carried away by a stream, or being seized by the king, another pledge must be delivered or the sum (lent) must be repaid.” The passage—“The (mortgaged) land being carried away by a stream” is (used) to indicate any act of God.

Acts of God defined, and who is liable in the pledged property being destroyed by an act of God or of the King.

Moreover—

LX. By the acceptance of a pledge, the validity thereof is established. If it be spoiled though carefully kept, either a substitute must be given in pledge, or the creditor must be repaid the amount of debt.

Validity of a pledge established by its acceptance.

The word acceptance explained, and the mode of rendering different kinds of pledges valid, discussed.

15. "By acceptance"—*i. e.*—by actual possession and enjoyment of a pledge for custody or use, the hypothecation is rendered complete, not by the mere attestation or execution of a written contract, neither by mere indication (of intention.) Thus it is said by *Nareda*—"A pledge is of two kinds. (1) of moveables and (2) of immoveables. Both are valid, if there is possession or enjoyment, otherwise they are invalid. The object is as follows:—The text—"In the case of pledges, (of both descriptions,) acceptance (by gift,) or purchase, those that are prior in date are valid." Is explained thus:—A prior sale &c. being accompanied with possession, becomes valid. If they are without possession, they are void even though they be prior in time.

When a new pledge is to be substituted for the old one, or when the debt is to be liquidated.

16. If the pledge, though carefully kept, and unchanged in character, becomes insufficient in course of time to fetch the principal with interest, another pledge must be delivered, or the debt must be paid to the creditor. By saying—"If it be spoiled, though carefully kept," it is intimated that, the pledge must be kept with care.

17. The exception to the text,—"A pledge is forfeited, if the debt is doubled," is as follows:—

Debt contracted on the pledge of character or religious merit, must be paid with interest even if it is swelled up to two-fold.

LXI. A debtor must be compelled to pay with interest the thing received by him on the pledge of his character or religious merit: and he should be compelled to repay double the amount received by him on his plighted word or solemn affirmation.

Interpretation of the word "character."

18. "Character" *i. e.*, good conduct "The thing received on the pledge of his character," means the thing received on the faith of the good character of the recipient. This applies to cases in which the creditor receives on the faith of his character, a security more valuable than the thing lent, as to cases in which the debtor receives on the faith of his character a loan

more valuable than the thing pledged as security. In either of these two cases, the king must compel the debtor to pay the debt with interest. The meaning is that even if the debt becomes double, a pledge of this character shall not be forfeited, but the whole amount though double must be paid. "Received by him on his plighted word" the meaning is this: if at the time of the delivery of pledge, there is promise to this effect that, even if the amount becomes double, it shall be repaid, but the pledge will not be forfeited, the king (in such cases) shall compel the debtor to pay double the amount.

If on pledge of a trifling amount, loan is contracted on confidence of mutual characters, the debt even if double with interest, must be enforced.

19. According to another interpretation, the character itself is the subject of the pledge. The word character means, the merit earned by performance of religious rites, such as oblation in the Ganges, the use of sacrificial fire, and the like. If a loan is received on such a pledge, *i. e.*, on the pledge of religious merit, the debtor must repay double the amount, but the pledge will not be forfeited.

Another interpretation of the text.

20. In connection with the subject of pledge a different subject is treated of through the words "or solemn affirmation." If in order to complete a purchase, sale, &c., a condition is made and a ring or the like is given to another, the party violating the condition must pay double the amount. But if the party who gave the ring or the like, fails to fulfil the condition, he will only lose the thing given. If the other person (with whom the ring, &c. is kept) fails to fulfil the condition, he must pay double the value of the ring, &c.

Ditto.

Moreover—

LXII. To the debtor who comes to redeem his pledge, the creditor must restore it, otherwise he will be punished as a thief; and if the creditor is absent, the debtor may pay the debt to his confidential agent, and take back the pledge.

Where is the creditor to restore the pledge and to whom is the debtor to pay the debt in the absence of the creditor.



Creditor cannot detain the pledged property when the debtor is willing to redeem the same on payment of the debt.

21. The creditor must release the pledge to the debtor who comes to redeem it by payment of the debt, he, (the creditor,) must not detain it in expectation of getting more interest. "Otherwise"—i. e.—on his refusal to release, he will be punishable as a thief. If the creditor is not at home, the debtor, having paid the debt with interest to the confidential agent of the creditor, may take back his pledge.

How is the debt- or to proceed in case the creditor or in his absence his agent refuses to receive payment.

22. In case the creditor is absent, and his confidential agents do not accept the money, or if the creditor is absent and the debtor wishes to pay the money by the sale of the pledged property, what is to be done? On this point, it is declared—

LXIII $\alpha$ . Or it may remain where it was, without interest (on the debt); the value (of the thing pledged) on that date being ascertained.

Debt not to bear interest from the date when the value of the property is ascertained.

23. The pledged chattel, being appraised, may be kept in the creditor's possession without any interest. Thenceforward the principal (though not paid) will not carry interest, until the creditor releases the pledge on receipt of the money, or until another chattel of the same value is substituted by the debtor.

How is the creditor to proceed if the debtor does not come on or after the day when the debt becomes double.

24. If at the time when the loan was contracted, it was stipulated that, even if the debt be doubled, the pledge will not be forfeited; and subsequently the debt becomes double, but the debtor is absent, what course is to be adopted by the creditor? On this (point) it is declared—

The procedure to be adopted by the creditor prescribed.

LXIII $\beta$ . "If the debtor fail to come, the creditor may sell (the pledge) before witnesses.

Ditto explained.

25. If the debtor be not present, the creditor may recover his dues by the sale of the mortgaged property before witnesses, and his (the debtor's) confidential agents. This is optional with the creditor, as implied by the word (vá) used in the text.

26. If there was no such stipulation at the time when the loan was contracted, namely, that the pledge will not be lost even if the debt becomes double, then, the pledge will be lost, under the text—"The pledge is forfeited if it is not redeemed when the debt is doubled." If there be such a stipulation, then the text under consideration will apply.

27. Special provision is made with regard to a pledge for use, which is as follows—

LXIV. "If the debt secured by the pledge has doubled, the pledge shall be released; provided the (value of the) usufruct of the thing pledged be double (the amount of) the loan.

When and how shall the pledge be released.

28. If the money invested becomes double with the interest agreed to be paid (by the debtor,) and if that amount is realized from the usufruct of the pledged property, the creditor must release the pledge. Or it may mean, that where the property pledged has not been used by the creditor, either because there was a stipulation, at first to the effect, that the creditor will not take possession of the property pledged, until the debt becomes double, or for any other reason, the creditor will then take possession, and after realizing double the amount of the loan from the usufruct, shall release the pledge. If the creditor has realized anything in excess of double the amount of the principal, that also should be returned. Because this text was intended to provide for the liquidation of the principal debt with interest from the usufruct of the property. A pledge of this sort is called by the people "*kshayadhi*" that is, a pledge by the enjoyment of which the debt is liquidated.\*

The 2 explanations of the above text given.

Refund of any amount realised by the creditor in excess of double the amount of the mortgage debt to be made to the debtor.

"*Kshayadhi*" defined.

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\* Vide Text LVIII.

The term *kshayadhi* is composed of two words "*kshaya*" destruction and *adhi* a pledge, meaning thereby a sort of pledge by the enjoyment of which both the principal and the interest are destroyed.

The creditor is to retain possession of the pledge till the principal is paid even after the principal has doubled where there is a promise that the pledge will be enjoyed in lieu of interest.

29. Where there is a promise that the pledge will be enjoyed in lieu of interest, then even after the principal has become double, the pledge can be used till the principal is repaid. This has been clearly declared by *Vrihaspati*—"If a pledge given for use, be for the payment of the principal and interest, the debtor will get it back after the fixed time. (If the said pledge be for the payment of interest only,) then the debtor can redeem it by paying the principal. If the usufruct exceeds (the rate of interest,) then the creditor cannot *get the principal*, and (if the usufruct is not sufficient to make good the *interest*,) the debtor shall not be entitled to redeem the pledge, except by consent." The meaning of this text is this,—"Pledge given for use" is a mortgage, the usufruct of which is allowed to be enjoyed. This pledge is divided into two sorts; first, a pledge for the liquidation of the principal, and interest, secondly, a pledge merely for the liquidation of the interest. Of these (two sorts) the pledge for the liquidation of the principal and interest may be redeemed by the debtor after the expiration of the stipulated period. The meaning is, that when the principal with interest has been realised by the creditor from the usufruct, (the debtor) is entitled to redeem it. But if the use of the pledge is allowed in lieu of interest only, the debtor will be entitled to redeem it on payment of the principal. An exception is declared in the text—"If the usufruct exceeds &c." If the pledge yields more than the amount of interest, the creditor is not entitled to get back the principal, *i. e.*, the debtor will get back the pledge without paying the principal. In case, the usufruct is not sufficient to meet the amount of interest, then the debtor cannot get back the pledge even on payment of the principal. The meaning is, that the debtor can get it back by paying the balance of the interest also. Again an exception to both the last-mentioned cases is declared "except with each other's consent." Where there is no mutual consent of the debtor and creditor, the last two provisions

are to be followed. But where they are agreed with one another, the creditor may enjoy the pledge though it is a valuable one, till the principal is repaid, and the debtor may take back the pledge, although it is worthless, merely, on payment of the principal.

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## CHAPTER VII.

## SECTION I.

*On Deposits.*

*Upanidhi* or deposit defined.

LXV. A thing enclosed in a vessel, which the owner delivers to another, without disclosing what it contains, is called *upanidhi* or deposit, and must be restored in the same condition.

Ditto explained, and how such deposit is to be restored.

1. "Vessel, a casket or the like, containing that which is to be deposited, the thing contained therein under seal, which the owner confidentially delivers to another for safe custody, without mentioning its form, quantity or the like, is called an *upanidhi*. As it is declared by *Náreda*—"Where a man bails any of his effects under a seal without mentioning its quantity and kind, it is considered an *upanidhi* or deposit, but the wise call it *nikshapa* or specified deposit." "And must be restored in the same condition," means, the person with whom the thing is deposited, must restore it to the depositor marked with the seal as before.

2. An exception to this is declared as follows:—

When such deposit is not to be restored.

LXVI. But he shall not be compelled to replace it, if it is lost by the act of God or of the king, or if it is taken away by robbers.

The above explained.

3. "That" means, *upanidhi* or deposit. If it be lost by the act of the king, by accident, water or the like, or if it is stolen by thieves, the depositary shall not be compelled to make good the loss. The owner's property will be lost, there be no fraud (on the part of depositary)—As it is stated

by *Nāreda*—"What is lost, together with the property of the depositary, is lost to the depositor; so if it be lost by the act of God or of the king, unless there was any fraud on the part of the depositary."

An exception to this is as follows:—

LXVIa. When the deposit is lost after a demand for restitution has been made without success, the depositary is to be compelled to make it good and to pay a fine of equal value.

When the deposit can be recovered.

4. If the depositary did not return the deposit on demand, and it is subsequently lost by the act of the king, &c., shall be compelled to make it good by paying the value to the owner, and to pay an equal amount of fine to the king.

Explanation of the above.

5. The author next propounds the fine to be inflicted on the depositary who enjoys deposit.

LXVII. If the depositary, of his own accord, use the thing deposited, he shall be amerced, and compelled to pay the price of the thing with interest.

When is the depositary to be compelled to pay the value of the deposit.

6. "Of his own accord" that is, without the consent of the owner. "Use the thing deposited" enjoys it or derives any profit by investing it, &c. Such a depositary shall be fined in proportion to the enjoyment and use, and he must be compelled to restore the deposit with the profit to the owner. If it has been appropriated, then it must be restored with the interest. If it has been invested, it must be restored with the profit derived from the investment.

The above text explained.

7. The extent of the profit is declared by *Caṭyāyana*—"A deposit, the balance of interest, the price of commodities purchased and sold, not paid after demand, shall bear interest at the rate five in the hundred." This rate applies to the case of enjoyment. In the case of waste, caused by negligence or carelessness, a special rule has been laid down

*Caṭyāyana's* text as to the extent of profit explained.

by the same sage (*Caṭyáyana*)—"For a thing enjoyed, the depositary shall be compelled to pay the price with interest; for a thing neglected, the value only; for a thing lost by carelessness, something less." "Something less" that is less by one-fourth of the value.

8. The author next declares that the rules for this description of deposit will hold good in the case of things borrowed, &c.

Different kinds  
of deposit, v z.,

LXVIIa. This is the rule respecting a loan for use (*yachita*) a deposit for delivery (*anwahita*) a deposit unspecified (*nyasa*) and an open bailment (*nikshepa*) and the like.

*Yachita*, *Anwahita*,  
*Nyasa*,  
*Nikshepa*, defined  
and explained.

9. Clothes, ornaments or the like borrowed (from another) at the time of marriage or other festival, are called *yachita*. *Anwahita*, that is, a thing kept as a deposit in the hand of a person, who again makes it over to another man, with the direction "give it to the owner." If a thing, after it is shown to the head of the family, is left with the other members of the family, in his absence with directions to make it over to him (the head of the family) it is called *Nyasa*. If any thing (under the above circumstances) be left in the presence of the head of the family, it is called *Nikshepa*. (In the text) the words "and the like" include gold, &c. made over to the goldsmith, &c. for preparing bangles and the like, as also things mutually given to each other with the direction, "let this property belonging to me be kept by you, and let that property belonging to you be kept by me," as *Náreda* declares—"This very law is observed in the case of loans received on asking, deposits for delivery and the like, bailment with artists, deposits and bailments on mutual trust."—In all these cases, (*i. e.*) loans received on asking &c. the law laid down for deposits will apply.

## CHAPTER VIII.

## OF WITNESSES.

## SECTION I.

1. It has been declared, that evidence consists of written proof, possession, and witnesses. That of possession has already been defined. The nature of oral evidence is now to be declared. A witness may be either from seeing or hearing, as has been declared by *Menn* : " Evidence of what has been seen or of what has been heard is admissible." They are two-fold ; a witness made, and a witness not made : a made witness is one nominated to give testimony : a witness not made is one not so nominated.

Witnesses may be by seeing or hearing, and may be either made or not made.

2. The made witness again is divided into five classes, and the witness not made into six, making in all eleven descriptions, as has been declared by *Náredu* : " Eleven descriptions of witnesses are recognized by the learned in law, five of which are made, and the remaining six are not made."\* Their distinctions also have been declared by him : " A witness by record, by memory, by accident, by secrecy, and by corroboration." † These are the five classes of made witnesses : the nature of the witness by record and the rest has been defined by *Catyáyana*.

Eleven classes of witnesses, five made and six not made.

3. " One brought by the claimant himself, and whose name is inserted in the deed, is called a witness by record ; a witness by memory is without record." ‡ He also has given an explanation of the witness by memory without record : " The witness who for the purpose of greater publicity having witnessed a transaction has been repeatedly

Definition of made witnesses.

\* *Vivádatandava*.

† *Vivádatandava* and *Smritichandricá*.

‡ *Vivádatandava*.



reminded of it by the claimant, is termed the witness by memory.”\* He who fortuitously arrives at the time of a transaction, and is cited as a witness, is termed a witness by accident. A distinction has been propounded by him between these two descriptions of witnesses, although they are both unrecorded : “ Two witnesses for the substantiation of a claim are termed unrecorded, one intentionally brought, and one accidentally coming.” One who standing concealed, is caused to hear distinctly the defendant’s words by the claimant, for the purpose of establishing his allegation, is termed a witness by secrecy.”† One who subsequently confirms the testimony of witnesses, whether his information be mediate or immediate, is termed a witness by corroboration.”‡

Definition of witnesses not made.

4. The six descriptions of witnesses not made have also been defined by *Náreda* : A townsman, a judge, a king, one authorized to manage the affairs of the parties, one deputed by the claimant, and (in family disputes) persons of the same family are also to be considered witnesses.”|| Here the term judge is intended to include the scribes and assessors, from this verse : “ When a king investigates a suit, the witnesses are declared to be the scribes, judge, and assessors in succession.”§

Qualifications & number of witnesses,

5. He next declares the qualifications and number of witnesses :

LXVIII. “ Religious, generous, of honourable family, speakers of truth, eminent in virtue, candid, having sons, wealthy.

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\* *Vivādatandava*.

† *Ibid*.

‡ *Náreda*, cited in the *Vivādatandava*.

|| *Vivādatandava*, *Smṛitichandrica*.

§ *Ibid*.

LXIX. And in number three, are to be considered witnesses: conformers to revealed and written law, according to tribe and order, or all [in the cases of all].”\*

Explanation of  
the preceding text.

6. *Religious*,—addicted to piety. *Generous*,—habituated to making gifts. *Of honourable family*,—descended from a noble stock. *Speakers of truth*,—accustomed to veracity. *Eminent of virtue*,—not preferring their temporal interests. *Candid*,—not deceitful. *Having sons*,—possessed of male offspring. *Wealthy*,—possessing much gold and other property. *Conformers to revealed and written law*,—punctual in the performance of indispensable and enjoined ceremonies. Such persons being three in number, are to be considered witnesses. *Three*,—that is, a number not less than three; there cannot be less than three, but any excess above that number is optional. Such is the meaning. *According to tribe*,—that is, not differing in tribe; tribe, such as the *Moordhabushiktas* and the like, whether in the direct or inverse order. Thus *Moordhabushiktas* are witnesses in the cases of *Moordhabushiktas*; so also in the cases of *Ambushktas* and others. This rule obtains also according to the order, that is, not different in order. *Order*,—the *Brahminical* order and the like. Thus *Brahmins* of the qualifications and number above-mentioned are witnesses for *Brahmins*, and the same with *Cshettryas* and the rest. So also women should be made the witnesses of women, as *Menu* has said: “Women should regularly be witnesses for women.”† But where they cannot all be procured of the same tribe or order, *Moordhabushiktas* and the rest, and *Brahmins* and the rest, may be made witnesses in the cases of each other.

\* *Yajñavalkya*, cited in the *Yacāṇharāmayuṇa*, *Vivādatandava*.

† *Menu*, 8, § 68, cited in the *Vivādatandava*.

Incompetent witnesses are of five descriptions.

7. In the absence of witnesses of the description above specified, for the sake of distinguishing others not positively prohibited, it is necessary to define those who are incompetent witnesses, they have been declared by *Ná'reda* to be of five descriptions: "By those skilled in the law, witnesses who are incompetent have been found to be of five kinds."\*

Reasons of incompetency.

8. "By reason of interdict, of delinquency, of contradiction, of self-appointment, and of intervening decease."†

Those who are incompetent by reason of interdict.

9. Those who are incapacitated by reason of interdict are next stated: "Learned students, religious devotees, superannuated persons, ascetics, and the like, are those incapacitated by interdict; not from any other cause."‡ Religious devotees are *Vanaprasthas*. By the term "and the like," is meant persons disobedient to their father, &c., as *Sancho* has said: "Persons disobedient to their fathers, residents in the families of their spiritual preceptors, ascetics, inhabitants of the forest, and devotees, are incompetent witnesses."||

By reason of delinquency.

10. Those who are incompetent by reason of delinquency are next treated of: "Thieves, public offenders, irascible persons, gamblers, cheats. These are incompetent from delinquency: there is no truth in them."§ *Irascible persons*,—those subject to anger. *Gamblers*,—those who play with dice.

By reason of contradiction.

11. The characteristic of witnesses incompetent from contradiction is next declared by him (*Ná'reda* :) "Of witnesses recorded and summoned by a litigant party, should one utter

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\* *Viva'datandava* and *Smritichandrica*’.

† *Ibid.*

‡ *Ibid.*

|| *Ibid.*

§ *Ná e 'a*, cited in the *Smritichandrica*’.

a contradiction, all are rendered incompetent by that contradiction.”\*

12. The nature of witnesses incompetent by reason of self-appointment is next set forth. “He who not having been indicated, comes and offers his evidence, is technically called *Scookee*, or spy.” Such testimony is not available.”†

By reason of self-appointment.

13. The description of witnesses incompetent by reason of intervening decease is next given : “How can any person give evidence touching a claim, the nature of it not having been communicated, and the claimant not being in existence? Such a person is an incompetent witness by reason of intervening decease.”‡ The meaning is this : as to what claim or in whose behalf shall the witness depose, the plaintiff or defendant not being in existence, or being dead, the claim not having been preferred, and the nature of it not having been explained by the parties to the witnesses, and they not having been desired to bear witness in the matter? These, then, are incompetent witnesses by reason of intervening decease.

By reason of intervening decease.

14. But when sons or others are instructed by a father or other person at the point of death, or even in health, to give evidence in a certain matter, they may be witnesses after decease, as *Nāreda* has said : “After the death of the claimant, except those instructed by him on the point of death.”|| Also, “A witness may give evidence in a matter touching the six species of bailments [the claimant being

Exception in cases of evidence after claimant's decease.

\* *Caṭyāyana*, cited in the *Vyavahāramayuc'ha*, *Smṛitichandricā*.

† *Nāreda*, cited in the *Smṛitichandricā*.

‡ *Ibid*.

|| *Ibid*.

dead,] a just claim having been communicated by one not of unsound mind.”\*

15. ¶ Other incompetent witnesses have also been enumerated :

Other incompetent witnesses enumerated,

LXX., LXXI. “ A woman, a minor, an old man, a gamester, an intoxicated person, a madman, an infamous person, an actor, an infidel, a forger, one deformed, degraded from cast, a friend, one interested in the subject matter, a partner, an enemy, a robber, a public offender, one convicted, an outcast and others, are incompetent witnesses.”†

Explanation of the terms of incompetency.

16. *A woman*,—a term of obvious import. *A minor*,—one who has not attained years of discretion. *An old man*,—one whose age exceeds eighty years. By the term *old*, learned students, and those excepted in other texts are indicated. *A gamester*,—one who plays with dice. *An intoxicated person*,—with liquors and the like. *A madman*,—one under planetary influence. *An infamous person*,—accused of the murder of priests or other similar offences.‡ *An actor*,—a dancer. *An infidel*,—an atheist or the like. *A forger*,—one who fabricates documents. *One deformed*,—destitute of an ear or other organ. *Degraded from caste*,—a slayer of a Brahmin or other similar criminal. *A friend*,—an intimate. *One interested in the subject matter*,—having an interest in the point contested. *A partner*,—one engaged in the same business. *An enemy*,—a foe. *A robber*,—a thief. *A public offender*,—one relying on his own violence. *One convicted*,

\* Nāreda, cited in the *Smṛitichandricā*

† Yājñavalkya, cited in the *Vyavahāramayuc'ha*.

‡ Nāreda, cited in the *Virādatandava*; but Yājñavalkya in the *Tyāg-hāramayuc'ha*.

—one whose falsehood has been proved. *An outcast*,—one deserted by his relatives.

17. By the term “and others” is indicated those incompetent witnesses who are pointed out in other texts also. Incompetent witnesses, by reason of delinquency; incompetent by reason of contradiction, and by reason of self-appointment and intervenient decease. These, and women, children, and the rest, are incompetent witnesses.

The text includes other incompetent witnesses formerly prohibited.

18. Witnesses are to be three in number, but to this rule he propounds an exception.

LXXII. “By consent of both parties, even one person of virtuous knowledge may be a witness.”

18a. A person of virtuous knowledge signifies, one who, by means of knowledge, performs all the indispensable and enjoined ceremonies; even one such person may be a witness, by the acquiescence of both parties. By virtue of the term *even*, the number two is also included. “*Conformers to revealed and written law*.” By this rule, although it would appear that virtuous knowledge is equally an attribute of three, yet the meaning is, that their evidence is admissible without the consent of the parties, but that the evidence of one or two is not admissible without the consent of the parties; therefore the mention of three is relevant.

Exception as to the number of witnesses.

19. An exception is next propounded to the text “*religious, generous*,” &c. “Every man may be a witness in cases of abduction, robbery, assault and abuse, and a flagrant offence.”\* The definition of abduction, &c., will subsequently be given. In such cases, all those who are prohibited in texts as destitute of piety and other qualities may be wit-

Exception as to the qualifications of witnesses.

\* *Yijnjawalkya*, cited in the *Vyavahāramayuc'ha*, but uncertain in the *Vaśīṣṭa* and *andava*.

nesses. But even here, those cannot be witnesses who are incompetent by reason of delinquency, or of contradiction, or of self-appointment; because the reason of incompetency, that is, there being no truth in them, exists here also.

Definition of offences.

20. Although from this text it appears, that adultery, theft, and assault and abuse, rank with flagrant offences, yet as these are committed openly by persons relying on their own violence, separate mention has been made of adultery and the rest, which rather signify offences committed privately. Homicide, robbery, forcible abduction of other men's wives, and assault and abuse, are the four descriptions of flagrant offences.\*

21. Next is propounded the deposition of witnesses.

Mode of taking depositions.

LXXIII. "The witnesses should be made to depose, having been placed near to the plaintiff and defendant:"†

21a. Brought close to the plaintiff and defendant. It appears, from a rule laid down by *Goutama*, that they need not speak when questioned apart. They shall be made to depose in the manner hereafter mentioned. Here *Calyáyana* has propounded a distinction. "The judge, being in the assembly, should calmly interrogate the witnesses, placed near to the plaintiff and defendant. He will enquire their testimony (except in the case of Brahmins) in the presence of the gods and priests."‡ In the forenoon, let the judge, being purified, having severally called on the witnesses, being purified also, whose faces are turned either to the north or to the east, in-

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\* *Vivádatandava*.

† *Yājñavalkya*, cited in the *Vivádatandava*.

‡ *Vivádatandava*, *Vyavahāramayuc'ha*, and *Smṛitichandricā*.

terrogate, by the solemnity of repeated adjurations, all being acquainted with the rules of duty and circumstances of the case."\*

22. *Menu* has propounded a rule to be observed in taking the depositions of *Brahmins and others*.† "Let the judge cause a priest to swear by his veracity; a soldier by his horse or elephant, and his weapons; a merchant by his kine, grain, and gold; a mechanic or servile man by *imprecating on his own head, if he speak falsely*, all possible crimes."‡ The meaning is, he shall adjure a *Brahmin* by saying, If you speak falsely, your truth will be destroyed: a *Cshetrya* by saying, Your horse or elephant and weapons will become useless: a *Vaisya*, Your cattle, seeds, and gold will be unproductive: a *Sudra* he shall adjure by saying, If you speak falsely, all sins will be on your head.

Mode of adjuring several orders.

23. "Regenerate men who tend herds of cattle, who trade, who practise mechanical arts, who profess dancing and singing, who are hired servants or usurers, let the judge exhort, and examine as if they were *Sudras*.|| The term regenerate men has been used to denote, that those of the military and commercial classes are likewise included in the above text. The term "*who profess singing*," means vocal performers.

Exception in case of certain *Brahmins, Cshetryas, & Vaisyas*.

24. If the defendant take exception to witnesses, and it be susceptible of visible proof, as in cases of minority, the

Case of witnesses being challenged.

\* *Nāreda*, cited in the above authorities.

† *Menu*, 8; § 102, cited in the *Vivādatandava*, *Smṛitichandrii*, and *Vyavahāramayuc̥ha*.

‡ *Menu*, 8; § 113, cited in the *Vivādatandava*, *Vyavahāramayuc̥ha*, but *Nāreda* in the *Smṛitichandrii*. "Sometimes they swore by any thing they made use of, as a fisher by his nets, a soldier by his spear, &c."—Potter's *Antiquities of Greece*, vol. i., page 293.

|| *Vivādatandava* and *Smṛitichandrii*.



exception must be tried by that ; but in cases not susceptible of visible proof, it rests on his (the defendant's) assertion, and on popular report, but not on other witnesses, so that may there be no infiniteness.

A false challenge punishable.

25. If a defendant, having taken exception to witnesses, cannot establish it, he is to be amerced according to his ability ; but if he prove it, the witnesses become incompetent, as has been said : " A person failing to establish an exception openly made against witnesses, should be punished : but if proved, the witnesses are to be dismissed, and deprived of the privilege of testimony."\*

Witnesses being found incompetent, recourse may be had to other means of proof.

26. Exceptions having been proved against all the witnesses adduced by the claimant, should he be destitute of other means of proof, he will be defeated ; from the text, " Should the claimant, relying solely on the veracity of his witness, be defeated, he shall be caused to pay a fine : " and the meaning is, that should he not be destitute [of other means of proof,] he may have recourse to additional evidence.†

27. In reply to the question, How is the adjuration to be urged ? it is stated,

Form of adjuration to be used towards the servile class, and to the regenerate orders following mean occupations.

LXXIIIa, LXXIV., LXXV. " Those places assigned to offenders and to heinous sinners, and those places assigned to house-burners, and those assigned to the murderers of women and children : he will obtain all those places (of punishment) who gives false evidence. All the virtues performed by you in hun-

\* *Veeramitrodāya*.

† *Nāṛada*, cited in the *Vāṇdatandava* ; but *Cāṭyaṅga* in the *Smṛiti-haṇḍrikā*.

dreds of other worlds will accrue to him whom by your falsehood you have injured."

27a. The meaning is, that the admonition is to be as follows. Those places assigned to persons who have committed heinous and grievous sins, to house-burners, and to the murderers of women and children, he will attain who gives false evidence. Moreover, all the virtue practised by you in hundreds of other worlds will accrue to him who has been defeated by means of your falsehood. This must be understood as relating to the servile class, as appears from the words of the text: "But a servile man by all possible crimes." It must be understood also as relating to regenerate men, exercising business of herdsmen, &c., as appears from the text: "Regenerate men who tend herd of cattle," &c.

28. As it is preposterous to suppose the loss of all the virtues practised in many other worlds, and the acquisition of the fruits of grievous offences committed by another, merely from the utterance of a falsehood, it follows that this is declared; solely for the purpose of creating awe in the witnesses; as *Nāreda* has said: "By ancient virtuous texts, and by extolling the pre-eminence of truth, and by denouncing falsehood, he will repeatedly inspire them with awe."\*

The adjuration not to be understood literally.

29. In answer to the question as to the mode of proceeding when the witnesses, having been admonished, remain mute.

LXXVI. "A man not giving evidence will be made to pay the whole debt by the king, together with ten per cent. [on the amount], after forty-six days."†

Penalty for refusal to give evidence after admonition.

\* *Vividatandava*.

† *Yājñyavalkya*, cited in the *Vividatandava*, *Smṛitichandrika*, and *Yāvatāramayucika*.

29a. He who having agreed to give evidence, and having been admonished, remains entirely mute, must be caused by the king to pay to the creditor the whole debt with interest, together with a tenth share over and above the debt. This tenth share will belong to the king, as appears from the text: "The debtor must be made by the king to pay a tenth share, over and above the debt proved ;"\* and this rule must be understood to operate after the expiration of forty-six days. He will not be made to pay it during the interval. It must also be understood as implying the absence of sickness and other calamity, as has been declared by *Menu*: "A man who is unafflicted, who comes not to give evidence, in loans and the like, within three fortnights *after due summons*, shall take upon himself the whole debt, and pay a tenth part of it as a fine *to the king*."† The term unafflicted, signifies one free from any calamity (inflicted) by God or the king.‡

30. Next is stated the case of a person who, though acquainted (with the nature of the affair), maliciously refuses to accept the office of witness.

Penalty for refusing to bear testimony.

LXXVII. "That mean person who, though acquainted, does not give evidence, is equal in point of sin and of punishment to false witnesses."||

30a. That mean person who, though fully conversant with the matter in dispute, does not give evidence, or refuses (to

\* *Veeramitrodaya, Retnácara.*

† *Menu*, 8, § 107, cited in the *Vivádatandava, Smritichandricá.*

‡ I have here been compelled to differ from the translation of Sir William Jones, see *Menu*, 8 : § 107. He has rendered the term *agada*, "one who labours not under illness;" but this, from the subsequent interpretation, is evidently not sufficiently comprehensive.

|| *Yājñavalkya*, cited in the above authorities,

become a witness), is equal in point of sin and of punishment to false witnesses. The punishment of false witnesses will subsequently be propounded.

31. Having punished the false witnesses, the case must be re-examined; and if the suit be concluded, and false evidence be subsequently detected, the case must be commenced upon *de novo*, as *Menu* has declared: "Whenever false evidence has been given in any suit, the king must reverse the judgment; and whatever has been done, must be considered as undone."\*

False evidence being detected, the judgment is to be reversed.

32. Next is propounded the rule in a case where the testimony varies.

LXXVIII. "In a contradiction, the assertion of the majority; where the numbers are equal, that of the respectable party; where there is contradiction among respectable witnesses, that of the most respectable."†

Mode of proceeding when the evidence is contradictory.

32a. In a case of contradiction or variation, the assertion of the majority must be received. But in a case of contradiction where the numbers are equal, the assertion of the respectable party must be received as evidence; but where there is a variation among respectable persons, the assertion of those who are most respectable must be received, that is, of those who are endued with a knowledge of revealed law, who shape their conduct accordingly, who have children, wealth, and virtuous qualities.

33. Where respectable witnesses are few, and others are many, there also the assertion of the respectable party is to

Superior respectability pre-

\* *Menu*, 8, § 117, cited in the *Virādatandava* and *Spiritichandricā*.

† *Vijayauleya*, cited in the *Spiritichandricā* and *Vyavahāramayukha*.

vails over superior numbers,

be received. This is inferrible from the text: "By consent of both parties, even one person of virtuous knowledge may be a witness ;"\* which demonstrates the great superiority of good qualities.

Application of  
a former text.

34. But the former text, "Of witnesses recorded and summoned by a litigant party, should one utter a contradiction, all are rendered incompetent by that contradiction," relates to a case where there is no distinction to be made [among the witnesses] by reason of their being all equal.

35. Next is propounded on what depositions of the witnesses, success, and on what defeat, depends.

The decision  
rests on the evi-  
dence of the wit-  
nesses adduced,

LXXIX. "He will be successful whose witnesses depose to the truth of his statement. But the defeat will certainly be his whose witnesses depose contrariwise."†

35a. That party will be successful whose witnesses depose to the truth of his statement, describing the subject matter, its quality and quantity, and saying, We know this to be true. But that party whose witnesses depose contrariwise, in opposition to his statement ; saying, We know this to be false, his will certainly or assuredly be the defeat.

Except where  
the witnesses do  
not recollect,

36. But where from a want of recollection of the subject of the claim, the witnesses do not depose either affirmatively or negatively, there the decision must depend on other evidence ; witnesses should not be repeatedly questioned by the king. That assertion which is unpremeditated should be received ; as has been declared : "That assertion which is unpremeditated and blameless should be received ; and hav-

\* Vide *supra*, § 10.

† *Vivádatandava and Smṛitichandrica*,

ing been made, the witnesses should not be perpetually questioned by the king.”\*

37. An exception is next propounded to the rule: “But the defeat will certainly be his whose witnesses depose contrariwise (§ 33.)

LXXX. “Evidence having even been given by witnesses, if others who are more respectable, or double in point of number, contradict them, the first deponents will become falsified.”†

Where a claimant's witnesses depose against his claim, he may adduce others to confute their evidence.

37a. Evidence having been given by witnesses of the first-mentioned description, designedly contrary to the subject matter of the claim, if others who are more respectable than the former, or double in point of number, contradict them, and depose conformably to the claim, then the former witnesses become falsified or perjured.

38. It may be objected, that this is not consistent; because by going into other proof, after depositions made by witnesses agreed to for the establishing the truth by the parties, the assessors, and the chief of the assembly, there would be the danger of infiniteness, and because it opposes the following text of *Nāreda*: “But after the suit is decided, evidence is fruitless, whether written or oral, if not in the first instance declared: as the efficacy of rain becomes useless after the crops are ripe, so evidence in decided cases is equally unprofitable.”‡ To this objection it is replied; If a claimant, in the course of the investigation, not relying upon as evidence the testimony of those witnesses with whose faults he was not cognizant, from their being on his own side, should, from their testimony being adverse to his claim,

Objection replied to.

\* *Nāreda*, cited in the *Vivādatandava*.

† *Yājñawalkya*, cited in the *Vivādatandava* and *Smṛitichandrica*.

‡ *Vivādatandava*.

take exception to such witnesses, what is there to prevent recourse being had to other proof ?

Credibility must be enquired into, after the question of competency has been disposed of.

39. "Of him whose organ is defective, and where there is a fallacy, that is not true knowledge." In the same manner, as in the case of an eye or other organ, though its defect may not have been proved, yet by reason of there being no certain evidence of the knowledge created by it, from its placing the object in a false light, defect may be inferred. The same reasoning applies here. Moreover, a scrutiny into the testimony of witnesses, as well as a scrutiny into [the character of] the witnesses, has been propounded : "Let him [the king], together with his assessors, scrutinize the testimony of witnesses." It has also been propounded by *Catyáyana* : "When the means of proof have been strictly examined, then the testimony must be scrutinized, and he who has been tried by a scrutiny into his testimony is termed scrutinized as to the subject matter."\* This is the rule. The term *kriya*, or proof, signifies the witnesses. When these have been examined by the rule, "A friend, one interested in the subject matter," &c., then their testimony must be scrutinized, and the scrutiny into the testimony is for the purpose of establishing the truth of the matter alleged, as appears from the text : "Allegations are established by truth." When the proof has been thus scrutinized, and by the scrutiny also of testimony the subject matter alleged has been scrutinized, he (the witness) is termed scrutinized in such case. This is the rule, or the established practice of those acquainted with judicial matters. [So likewise] where there is no defect of organ, preventive of knowledge, the object appears in its true light.

Another objection replied to.

40. Should it be objected, that the claimant cannot have recourse to other means of proof passing over the proof ad-

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\* *Vicādatandava*.

duced by himself, it is answered, that this is no objection. "Having departed from strong evidence, he who relies on weak evidence cannot recur to the former means of proof, after the decision has been given against him."\* From this text of *Catyáyana*, prohibiting recourse to other means of proof after judgment, it is indicated, that recourse may be had to other means of proof prior to judgment; also from the following text of *Náreḍa*: "But after the suit is decided, evidence is fruitless;" by which it appears, that recourse to other evidence is forbidden only at a time subsequent to the judgment, and not before also. Therefore, evidence having been given by witnesses, recourse may be had to other means of proof by one not content. This is the rule.

41. This being the rule, if persons originally indicated, but not then at hand, more respectable than or double the number of those whose evidence has been taken, be forthcoming, the proof must be made to depend on those witnesses; this appears from the text of *Náreḍa*: "But after the suit is decided, evidence is fruitless, whether written or oral, if not in the first instance declared." In default of those originally indicated, witnesses not indicated should be resorted to, not a divine test; from the text, "A wise man will reject the evidence of a divine test, if witnesses are procurable:" but if witnesses are not procurable, recourse must be had to divine test, and after this stage no other means of proof can be sought for by a non-content claimant, because there is no rule to that effect. Therefore the proceeding must be here finally determined.

What further means of proof may be resorted to, by a claimant not content with his evidence.

42. But where a defendant takes exception to his witnesses, being not content with the testimony given by them, as operating adversely to his interests; in such a case, as the liberty of adducing other means of proof has not been extend-

A defendant not being content with his evidence, cannot resort to other means of proof.

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\* *Paricsha'atua*, &c.



ed to a defendant, the purgation of the witnesses must be affected by a delay of seven days for the appearance of calamity *inflicted* by God or the king. And if the exception be established, the witnesses are to be made to pay the debt which was the subject of the action, and are to be amerced according to their abilities. But if the exception be not established, the defendant must rest content.

Text of *Menu*  
cited.

43. As *Menu* has declared: "The witness who has given evidence, and to whom, within seven days after, a *misfortune* happens *from* disease, fire, or the death of a kinsman,\* shall be condemned to pay the debt and a fine." This rule respecting the case of a non-content defendant must be understood as being an exception to the general rule, "He will be successful whose witnesses depose to the truth of his statement, &c."

Erroneous construction noticed  
and refuted.

44. Some have interpreted the rule, "Evidence having even been given by witnesses," &c., to signify, that the witnesses adduced by the claimant having deposed in favour of the claim, if the defendant produce other witnesses more respectable, or double in point of number, to depose contrariwise, then the witnesses of the original claimant will become falsified. But this is erroneous, because the production of evidence on the part of the defendant is [in the first instance] inadmissible. He is called the claimant who affirms the matter to be proved. His adversary, who denies it, is termed the defendant. Moreover, the proof of a negative is dependant on the establishment of an affirmative, and the establishment of an affirmative is not dependant on the proof of a

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\* *Menu*, Chap. 8, § 108.

† "The sixth general rule is: In every issue the affirmative is to be proved. A negative cannot regularly be proved, and, therefore, it is sufficient to deny what is affirmed until it be proved; but when the affirmative is proved, the other side may contest it with opposite proofs,"—Introduction to Morgan's Essay on the Law of Evidence, p. 39.

negative. Therefore the proof of the affirmative only is proper, the nature of a negative not admitting of its being established by witnesses or other evidence; and it is consequently right, therefore, that the claimant only should adduce proof. Moreover, the mode of proceeding is invariably propounded with reference to the nature of the reply, according to the following texts. "When a special plea and former judgment are pleaded, the defendant shall adduce the proof; in a total denial, the plaintiff. In a confession there is no issue." In one suit, the proof cannot rest on both parties. Therefore the construction, that "if the defendant produce other witnesses more respectable, or double in point of number, to depose contrariwise," &c., is inadmissible.

45. But the opinion [is not correct], that this has been propounded with reference to the following text, "In the case of two claimants in the same matter, both having witnesses, the witnesses of the first claimant must be received," that is to say, the witnesses of him who made the first representation are to be received; that this rule indicates whose witnesses should be received in the case of two affirmative claimants to the same property, by right of inheritance, without any ascertainable priority, or posteriority as to the time of the acquisition, and that the rule, "Evidence having even been given," &c., is an exception to it; that thus the witnesses of prior and posterior claimants being equal in point of number and quality, the witnesses of the prior claimant must be interrogated; but that this adversary's witnesses are to be interrogated where the witnesses of the posterior claimant are greater in point of respectability or double in point of number; that there is not proof of a negative, as both parties assert an affirmative;\* and the case

Another construction refuted.

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\* "For this is not properly the proof of a negative, but the proof of some position totally inconsistent with what is affirmed."—*Ibid*.

being unconnected with the four descriptions of answer, the settled rules of pleading do not apply to the example cited; and, that it is equally allowable to assign two means of proof to both parties, as two means of proof to one party in the same cause. In all this reasoning the holy preceptor does not acquiesce, as it is not inferrible from the use of the term "*even*," nor from the context, nor from the subject matter. Further discussion is needless.

46. False witnesses have already been treated of: their punishment is next declared.

Penalty of suborners and false witnesses.

LXXXI. "Suborners, and witnesses guilty of falsehood, should be severally punished in a penalty double that of the suit; and a Brahmin should be banished."\*

46a. He who by means of a gift of money or otherwise induces witnesses to depose falsely, is a suborner: he, and they, who falsely depose accordingly, are to be severally or individually punished in a penalty double that of the suit, that is to say, in a penalty double that which is awarded on the loss of the suit respectively, and a Brahmin is to be banished, that is to say, expelled from the country, but not [otherwise] punished.

Special rules in certain cases.

47. This must be understood as having special relation to a case, where the operation of avarice or other passion has not been ascertained, and not habitual. *Menu* has declared the punishment, when the motive of avarice or other passion has been ascertained, and habitual: "If he speak falsely through covetousness, he shall be fined a thousand *panas*; if through distraction of mind, *two hundred and fifty*, or the lowest amercement; if through terror, two mean amercements;

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\* *Yājñawalkya*, cited in the *Tirādātandava* and *Smṛitichandricā*.

if through friendship, four times the lowest ; if through lust, ten times the lowest amercement ; if through wrath, three times the next, or *middlemost* ; if through ignorance, two hundred complete ; if through inattention, a hundred only.\*

48. *Covetousness*, cupidity ; *distraction of mind*, perturbed state of the intellect ; *terror*, fear ; *friendship*, excessive partiality ; *lust*, extreme desire of female enjoyment ; *wrath*, anger ; *ignorance*, defective knowledge ; *inattention*, indifference as to information. By the numerals *one thousand*, &c., is always to be understood *panas*, or copper pice.

Explanation of the terms in the texts of *Menu*.

49. A just king will punish the three inferior tribes giving false evidence, having amerced them ; but he will banish a Brahmin. This relates to a case of repetition, as is denoted by the use of the present participle (*koorvan*). Having amerced the tribes, *Cshetryas* and the rest, with the fines above specified, he will punish them by stripes, &c., because the term *prubas*, in the ordinary acceptation, signifies corporal punishment, and the subject has relation to the ethical code. Corporal punishment includes cutting off the lips, amputation of the tongue, and deprivation of life ; and this must be understood as being proper to be inflicted with reference to the nature of the false evidence.

Punishment of the three inferior tribes for repeated perjury.

50. But having amerced a Brahmin, he will banish him : that is to say, he will expel him from the country, or denude him, as the meaning of the term *bibasyet* may signify the stripping off the clothes. By giving the causal affix, the penultimate syllable is rejected, as in the case of a derivative formed from a crude noun with the affix *ishtha*.† Moreover, the term *vasa*, residence, signifies a house, or place of habita-

Punishment of the priestly tribe for the same offence.

\* *Menu*, Chap. 8, §§ 120, 121, cited in the above authorities.

† An explanation of this sentence would involve a grammatical disquisition of some length. It displays an ingenious effort to save the Brahminical tribe, if not *totidem verbis*, at least *totidem literis*.

tion; and the term *bibasyet* may therefore mean, that he should unhouse him. The award of the fine for each description of motive must be given against a Brahmin with special reference to its being avarice or other motive, and in a case of non-repetition; but in a case of repetition, a pecuniary fine and banishment also; and here also with relation to the tribe, the subject matter, and the quality [of the parties], &c., the term *bibasum* must be interpreted as signifying denudation, destruction of dwelling, or banishment from the country. In a case of false evidence, where there is no proof of avarice or other motive, where there has been no repetition of the offence, and where the subject matter is inconsiderable, a pecuniary fine must be awarded against a Brahmin similar to that prescribed for the military and other tribes; but where the subject matter is considerable, expulsion from the country also; and the text of *Menu* is applicable to the case of all [the tribes], where [the perjury] is habitual.

Brahmin may be fined, but on no account corporally punished,

51. It should not be urged, that a Brahmin is exempted from a pecuniary fine, because it would follow, (as corporal punishment is prohibited,) that in the case of a trivial fault, it would be requisite to punish him by denudation, destruction of dwelling, branding, or expulsion, or else (as the only alternative) to exempt him from punishment altogether. It also appears *justifiable* from the texts: "To the four tribes, not performing expiation, he should adjudge the lawful penalty, corporal and pecuniary."\* "A Brahmin must be amerced a thousand, who approaches by force the secluded females of the regenerate tribes."† As to the text of *Sancha*, "Of the three tribes, privation of substance and death are modes of punishment; but expulsion and branding are prescribed for

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\* *Virádatandava*.

† *Ibid*.

the priestly order.”\* Here the term privation of substance extends to confiscation of the whole property, from its being placed in juxta-position with the term death ; as appears also from the following text, in which death and privation of substance are cited together : “ Corporal punishment includes imprisonment, and even life ; and a pecuniary fine of *panas*, &c., may extend to the whole property, from its being placed in juxta-position with the term death.” But the text, “He shall expel him from the country, leaving his property wholly untouched,” relates to an offence of the lowest degree, and not to offences in general. Moreover, corporal punishment must never be inflicted on a Brahmin. *Menu*, having propounded generally, “never shall the king slay a Brahmin, though practising all possible crimes,” proceeds : “No greater crime is known on earth than slaying a Brahmin : and the king therefore must not even form in his mind an idea of killing a priest.”†

52. Moreover, the text,

LXXXII. “He who having been called on for testimony, being influenced by his passions, conceals from others, should be punished eight-fold, and, if a Brahmin, should suffer banishment.”‡

Penalty  
concealing  
evidence.

for  
evi-

52a. The meaning is, he who having accepted the office of a witness, and being called on for his evidence together with the other witnesses, being influenced by his passions, his mind being under the impulse of anger or the other passions, at the time of speaking, conceals his evidence from the rest of the witnesses, saying, ‘I am not a witness in this case,’ should be amerced in eight times the amount awarded on the loss of

\* *Vivadatandara*.

† Ibid. *Menu*, Chap. 8, § 350, first stanza, and 351.

‡ *Yajñavalkya*, cited in the *Vivadatandara*.

the claim; and if a Brahmin, and unable to pay a fine equal to eight times the amount, he should suffer banishment: and the term *bībasum*, or banishment, may be here interpreted denudation, destruction of house and home, or banishment from the country, according to the circumstances of the case. But if persons of other tribes are unable to pay eight times the amount, they must be made to work at their several avocations, strictly confined, or sent to prison. The provisions of a former text also must here be attended to: When all the witnesses conceal, they are equally culpable.

Contradiction  
punishable.

53. But when, after giving their testimony, they afterwards contradict it, they must be punished with reference to the quality [of the parties], &c., as *Catyáyana* has declared: "Persons having spoken, afterwards contradicting, should be amerced as prevaricators."\*

Tampering with  
witnesses prohi-  
bited.

54. Witnesses cited by one party should not be secretly approached by the other, as *Náreda* has declared: "He shall not secretly approach a witness summoned by another; neither should he cause him to differ with another: a person so practising loses his suit."†

55. Standing mute, and deposing falsely, have been generally prohibited on the part of witnesses. To this he propounds an exception:

LXXXIII. "A man may speak falsely, in a case involving death to any of the tribes."‡

Standing mute  
and deposing false-  
ly, enjoined in  
*favorem vite*.

55a. Where it is probable that by speaking truth, death may happen to a *Sudra*, a *Vaisya*, a *Cshetrya*, or a *Brahmin*, there a witness may speak falsely: he should not speak truth.

\* *Vivádatandava*.

† *Smritichandricá*.

‡ *Yágyavalkya*, cited in the *Vivádatandava* and *Smritichandricá*.

Therefore, by the prohibition of speaking truth, standing mute, and deposing falsely, on the part of witnesses, which were formerly prohibited, are now enjoined. Where, in an accusation supported by circumstantial or other evidence, if, by speaking truth, death will ensue to any of the four tribes, and by speaking falsely death will not ensue to any one, in that case falsehood is enjoined. But where by speaking truth, death will ensue to either the complainant or the defendant, and by falsehood also death will ensue to one or other party, there silence is enjoined, should the king consent. But should the king by no means admit of silence, the evidence should be nullified by contradiction; and if that cannot be effected, the truth must be stated: because, by speaking falsely, there will be the double offence of the homicide of one of the tribes, superadded to that of falsehood; but by speaking truth, there will only remain the offence of the homicide of one of the classes.

56. In this case, expiation must be performed according to law. Lest it should be supposed, that, in such case, standing mute and speaking falsely being enjoined by law, there is no offence, the text has been propounded:

Expiation to be performed in such cases.

LXXXIIIa. “A *Saraswatee* oblation must be presented by regenerate men for the sake of purification from the offence.”\*

56a. For the sake of purification, that is, for the sake of removing the offence caused by standing mute or speaking falsely, a *Saraswatee* oblation must be severally presented by regenerate men. Belonging to the goddess *Saraswatee*, therefore called *Saraswatee*. The term *Churoo* signifies an oblation consisting of sound warm boiled rice.

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\* *Nijnyawalcya*, cited in the *Pratidatandava* and *Smritichandricā*.



Objection no-  
ticed.

57. The meaning is, that speaking falsely and standing mute, before prohibited, are here authorized. But the text, "That man is criminal, who either says nothing, or says what is false and unjust,"\* relates to general falsehood or silence, and this is the expiation for transgressing that prohibition. It should not be supposed that the authority in the text is inconsistent, and argued, that although standing mute and speaking falsely have been authorized, yet that the offence arising out of a transgression of the general prohibition re-

And replied to.

mains the same ; because standing mute and speaking falsely is a graver offence on the part of witnesses, but falsehood and silence generally is a slighter offence. Therefore the text granting the authority is pertinent. Although in other instances the removal of the graver offence occasions the removal of its concomitant slighter offence, yet in this instance, from the expression of the authority and the injunction of the expiation, the graver offence is removed, and its concomitant offence, though slighter, is not removed. This is to be understood.

In this instance  
the graver offence  
is removed, though  
the slighter one  
remains.

Expiation not  
incumbent on  
casual false wit-  
nesses,

58. The authority to speak falsely must also be understood as extending to travellers and others in [answering] general questions, in cases where the lives of any of the tribes are in danger, nor is there any expiation in such case, from there being no express prohibition. No penalty shall attach to witnesses or others on the truth of the story appearing by another cause and at another time : this also is inferrible from the text. The chapter on witnesses is here concluded.

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\* Last stanza of a text of *Menu*, Chap. 8, § 13.

# CHAPTER IX.

## OF WRITTEN PROOF.

### SECTION 1.

1. Having treated of possession and witnesses, written proof is next propounded; but a writing is of two descriptions, public and private. The nature of a public writing has already been explained; a private writing is now treated of: this is of two descriptions,—prepared by the party himself, and prepared by others. That which is prepared by the party himself requires no witnesses: that which is prepared by others requires witnesses. The mode of proving these two depends on local and peculiar usages, as *Nārada* has declared: “Written evidence is declared to be of two sorts; *the first*, in the hand-writing of the party himself, which need not have subscribing witnesses; and the *second*, in that of another person, which ought to be attested: the validity of both depends on the usage established in the country.”\*

General definition of written proof.

2. Next is propounded the rule regarding a writing prepared by others:

LXXXIV. “When any matter is mutually agreed upon voluntarily, a writing must be drawn out with respect to it, with the insertion [of the name] of the obligor, and duly attested.”†

Rule respecting an instrument prepared by others.

2a. When any agreement is voluntarily entered into, or stipulation made mutually between the creditor and debtor,

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\* *Vivādatandava*, *Smṛitichandricā*, and *Vyavahāramayuc'hā*.

† *Kūjyavaleya*, cited in the above authorities.

whether relating to gold or other *valuables*, then a writing must be executed, fixing the period of payment and the monthly rate of interest, for the purpose of establishing the fact on the expiration of such period; and it must be attested by witnesses of the description already mentioned. "With the insertion of the obligor,"—in which the obligor is mentioned, or in which the name of the obligor is mentioned in writing.

A contract may be binding without a writing.

3. Or else witnesses of the description before-mentioned may be employed, as appears from the following text of the *Smṛiti*: "For the purpose of proving any act done by the party transacting it, witnesses may be relied upon in judicial proceedings. The act of a party may be good without a writing."\*

4. Moreover,

LXXXV. "The year, month, fortnight, day, name, tribe, family, scholastic title, the names of the parties' fathers, &c., must be specified."†

Distinguishing marks to be inserted in a writing.

4a. *The year*,—twelvemonth. *The month*,—as Cheyt and the like. *The fortnight*,—the light or dark half of the month. *The day*,—the first or other day of the moon's age. *The name*,—the name of the creditor and of the debtor. *The tribe*,—Brahminical or other. *The family*,—descended from *Vashistha* or other stock: with these, that is to say, with the year, &c., it must be distinguished; also with the *scholastic titles*, as the title of *Buhobrichha* or *Kuttha*, assigned as the mark of distinction for reading a portion of the *Veṇḍas*. *The names of the parties' fathers*,—that is, the names of the

\* *Vivādatandava*.

† *Yājñavalkya*, cited in the *Smṛitichandricā*, and *Vyavahāramayuc'hā*, but uncertain in the *Vivādatandava*,

fathers of the creditor and debtor. By the term “&c.” is intended the nature of the subject matter, the occupation [of the parties.] The meaning, connected with what went before,\* is, that the writing should be distinguished by these characteristics.

LXXXVI. An agreement having been executed, the debtor should sign his name with his own hand, and should add, “what is above written is agreed to by me the son of such a one.”

The obligor  
should subscribe  
the writing.

5. A matter having been stipulated between the creditor and debtor, and the agreement having been determined and executed, the debtor, that is to say, the obligor, should subscribe his name with his own hand, and should moreover add or insert in the instrument, that what is above written is agreed to or approved by him the son of such a one.

LXXXVII. “The witnesses also, being equal, should write with their own hands, specifying the names of their fathers, ‘I, being such a one, am witness to this matter.’”†

The witnesses  
also should sub-  
scribe.

6. Those persons who are specified in the instrument as being witnesses should each, having specified his own and his father’s name, individually write with his own hand, that he, such a one, *Devadutta* or the like, is a witness in the matter in question. Being equal, signifies equality in point of number and qualifications.

7. If the debtor or the witnesses be ignorant of the art of writing, then the debtor and each of the witnesses by means of others, in presence of all the witnesses, must cause

Rule to be ob-  
served where the  
parties and their  
witnesses are igno-

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\* Alluding to the text cited in verse 2.

† *Vivadatandata*.

rant of the art of  
writing.

to be written their assent, as *Náreda* has declared: "That debtor who is ignorant of the art of writing, shall cause to be written his assent; or if the witness is ignorant, by means of another witness, in presence of all the witnesses."\*  
Moreover:

LXXXVIII. "The scribe must enter this: being solicited by both parties, by me the son of such a one, this has been written."†

7a. The scribe, being solicited by both parties, that is to say, by the obligor and obligee, should write at the foot of the instrument: By me *Devadutta*, or other name, the son of *Vishnamitra*, or other name, the above has been written.

8. A writing prepared by the party himself is now treated of.

Of a writing  
executed by the  
party himself.

LXXXIX. "But every document, which is in the hand-writing of the party himself, is considered as sufficient evidence even without witnesses, unless obtained by force or fraud."‡

8a. That instrument which has been executed by the obligor with his own hand, has been declared by *Menu* and other sages to constitute proof without witnesses, provided it were not obtained by means of force and lesion.|| By force,—

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\* *Vivádatandava*.

† *Yājñawalkya*, cited in the *Vivádatandava*, *Smṛitichandricá*, and *Vyavaháramayuc'ha*.

‡ *Yājñawalkya*, cited in the *Vivádabhangárnaṇa*, *Vivádatandava*, *Smṛitichandricá*, and *Vyavaháramayuc'ha*.

|| Compulsion by illegal distraint of liberty, or by intimidation of threats and penance of bodily harm, is duress. It vitiates a contract or obligation extorted by its means.—*Colebrooke on Obligations and Contracts*, Part I, p. 235. Lesion, presumptive of imposition or oppression, is a ground of rescinding any contract, executory or executed.—*Ibid.* p. 234.

violence. By lesion,—that which is effected under the influence of fraud, avarice, anger, fear, intoxication, &c.—provided it was not obtained by these means. *Nāreda* also has declared : “That writing is not proof, which is executed by a person intoxicated, by one under duress, by a female, by a minor, and that which is effected by force, and by intimidation, and lesion.”\*

9. And a writing executed by the party himself, or by means of another, should specify whether it is accompanied or unaccompanied by a pledge, should be drawn out according to peculiar local usages, and should not be deficient with respect to the import and language. This is all that is requisite. It is not necessary that its conditions should be expressed in classical or provincial language; as *Nāreda* has said : “That which is not adverse to peculiar local usages, and declaratory of the nature of the transaction of a pledge. That instrument is termed proof, which is connected in import and language.”† *Transaction* signifies making; the *transaction of a pledge*, the making a pledge: its *nature*, whether a simple deposit, or usufructuary, or for a specified period. Declaratory,—*making manifest*. Such is the meaning of the terms: declaratory of the nature of the transaction of a pledge. *Connected in import and language*: the import and the language—the terms in which these are preserved in due order. By this is meant “connected in import and language.”‡ Such a writing is proof. Here it is not requisite, as in the case of a public and royal instrument, that it should be expressed in classical language.

Mode in which  
it should be drawn  
out.

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\* *Vivādatandava*, but *Hareeta* cited in the *Smṛitichandricā*.

† *Vivādatandava* and *Smṛitichandricā*.

‡ It is not practicable to render a faithful translation of the original in this place, the disquisition being intended to exemplify the rule for forming the Sanscrit compound designated *Eubolrihi*.

10. In treating of the instrument, it may be mentioned, that the debt specified therein should be discharged by three persons :

XC. "A debt specified in writing must be paid by three persons alone."

A bonded debt claimable from the son and grandson of the obligor.

10a. As in the case of a debt contracted in the presence of witnesses, it must be paid by three persons, so in the case of a bonded debt, it must be paid by the obligor, his son, and grandson, but not by the fourth in descent, or those after him. This is ordained.

Objection answered.

11. Should it be objected, that a text has already declared universally : "By sons and grandsons, a debt must be discharged."\* By which it is already provided, that a debt must be paid by three persons, it is admitted : but the above text has been propounded to preclude the supposition, that in the case of bonded debts, there is, in another text, any exception to the precept. Thus, having treated of the nature of a bond, it has been declared by *Caṭyáyana* : "Such contracted by the ancestors must be discharged after the lapse of time."† *Such* alludes to the bonded debts. The debts of the ancestors must be discharged by their representatives, even though a long time may have elapsed. Here by the use of the plural number "*ancestors*," and the mention of the lapse of time, it might be inferred that the debts must be discharged by the fourth in descent, and those after them. Moreover, the text of *Hareeta*, "He will obtain payment who holds a bond."‡ Here also it might be inferred, from the general mention respecting the payment of the debt to any person holding a bond, that by the fourth in descent,

The text has been recited to exonerate the fourth in descent.

\* *Ratnācara.*

† *Virāḍatandava.*

‡ *Vāceramitroḍaya.*

and those after them, payment should be made. To obviate such a supposition, the above text has been properly recited. The two last-mentioned texts must be reconciled to the injunction of *Yogeeshwara*.

12. He states an exception :

XCa. "A pledge may be enjoyed until the debt is repaid."

12a. This text has been recited, lest it should be supposed, from the number being limited to three, that in the case of a bonded debt accompanied by a pledge, he who is exempt from the payment is also not entitled to redeem the pledge; and it implies, that until the debt is discharged by the fourth or fifth in descent, the pledge may be enjoyed: it follows, that the fourth, of those after him in descent, are entitled to adjust a debt accompanied by a pledge. Should it be objected, that this exception is superfluous, from the occurrence of a former text, "An usufructuary pledge\* is not forfeited,"† it is replied, that were it not for this exception, that text might be considered to extend to three only. All this is irrefragable.

Case in which the fourth and others in descent may adjust the debt.

13. Having disposed of incidental topics, the original subject is now reverted to.

XCI. "An instrument being in another country, or badly written, or destroyed, or effaced, or stolen, or torn, or burnt, or divided, he shall cause another to be executed."‡

\* Cited in the chapter on pledges.

† A part of the last stanza of the above text.

‡ *Yat'yawalcya*, cited in the *Smritichandricā*, but *Calgāyana* in *Vivādatandara*.



A New instrument may be executed in certain cases, by the consent of the parties.

13a. By this text it is directed, that he shall execute another when the *original* instrument is insufficient to prove the transaction; and its insufficiency to prove the transaction consists, as declared, in its being in another country, or in its being badly written, &c. *Badly written*, signifies, when the writing is bad, in consequence of the words or characters being written in a corrupt, equivocal, or unintelligible manner. *Destroyed*,—by lapse of time. *Effaced*,—in consequence of the ink having become pale, or by other means, when the writing is rubbed out. *Stolen*,—by thieves or others. *Torn*,—pulled to pieces. *Burnt*,—by fire. *Divided*,—split into two; and this holds good by the consent of the plaintiff and defendant.

Mode of proceeding when the parties object to the execution of a new instrument.

14. "But if they disagree, and the instrument be in a country remote from the scene of litigation, a period of time calculated with reference to the distance, must be allowed for its production:" or if the instrument be in a distant country, or destroyed, the case may be decided by having recourse to witnesses, as *Náreda* has declared; "In the case of an instrument being deposited in another country, or destroyed, or badly written, or stolen. Should it be in existence, time *must be allowed*: should it not be in existence, ocular evidence must be resorted to."\* A period of time must be allowed for the purpose of producing an instrument which is in another country, in existence, and forthcoming. But should it not be in existence, and not forthcoming, the case must be decided by having recourse to the ocular evidence of such witnesses as have formerly seen it. But where there are no such witnesses, the decision must be according to a divine test; as appears from the text, "Recourse must be had to a divine test, in a case where there is no writing or witnesses."†

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\* *Vivadatandava* and *Vyavahāramayuc'ha*.

† *Vivadatandava*, but *Catyáyana* cited in the *Vyavahāramayuc'ha*.

15. And this relates to a private document; the same rule is applicable to an official document, but there is this distinction: "In all cases, that is termed an official document, which is signed with the king's hand, and sealed with his seal in witness thereof."\*

What is termed  
and official docu-  
ment.

16. Another species of official document has been defined by *Vṛiddha Vasistha*: "That is termed a decree, which comprises the matter adduced to be proved, the answer, the pleadings, and the decision, sealed with the royal seal, and signed by the chief judge and others."† The subject matter being proved, he shall give the decree to the hands, that they, being sons of such and such persons, approve the judgment; from the following text of *Menu*: "Those assessors who are there present, conversant in the holy texts, shall give their signature under their own hands, according to the rule for writings."‡ The case is not divested of embarrassment, unless all the assessors are unanimous, as *Nāreda* has declared: "Where all the assessors are unanimous in opinion that [such a decision] is right, the case is divested of embarrassment; otherwise, it remains embarrassed."|| This applies to a suit consisting of four divisions, from the text: "That which establishes the thing to be proved, which consists of four divisions, and which bears the royal seal, is termed a decree *pro*."§

Of a favourable  
decree.

17. But where there is a loss [of the suit], "as in the five cases, One who contradicts, a prevaricator, one who does not attend, one who stands mute, and one who being summoned absconds:"¶ in such cases there is not a favourable

Of an unfavour-  
able decree.

\* *Vasistha*, cited in the *Vivādatandava*, but *Nāreda* in the *Smṛitichandricā*.

† *Vivādatandava* and *Smṛitichandricā*.

‡ Cited as the text of *Catyāyana* in the *Veeramitrodaya* and *Smṛitichandricā*.

|| *Vivādatandava*.

§ *Vivādatandava*, but cited as the text of *Vṛihaspati* in the *Smṛitichandricā*.

¶ *Vivādatandava*.

decree, but a decree *contra*. This is [awarded] for the purpose of adjudging amercement at a future period.\* But a decree *pro* is for the purpose of establishing a plea of former judgment. This is the distinction.

18. He next treats of the means of clearing up doubt from a document.

Mode of clearing up doubt from a contested document.

XCII. "In a disputed case, the document must be proved by the hand-writing of the party or the like, by reasonable inference, *by evidence of the contract which the instrument records, by a peculiar mark, by connexion and dealings of the party, by the contents of the document, or by previous recourse to measures for recovery.*"†

18a. The ascertainment of the fact, whether a document is genuine or fabricated, may be by those who wrote it. The meaning is, that a document may be proved by means of another document written by the same person, and if the writing assimilates, this is one method of [clearing up.] From the term "or the like," must be understood the comparison of the hand-writing of the attesting witnesses and the scribe, by means of other documents. *Reconcilement* to means of probability, is the meaning of the term "*reasonable inference*;" reconcilement of the relation between the property, and the time, place, and persons, that at such a time, and in such a place, such a person is likely to have possessed so much property. This is what constitutes *reasonable inference*.

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\* It was before laid down in Chap. ii., Sec. 1, §§ 8, that one who is non-suited is to be fined; but he does not therefore forfeit all claim to the subject matter, and the text here merely means that a judgment of non-suit is to be recorded, with the view of amercing the party in default.

† Uncertain in the *Vivādatanāra*, but *Yājñavalkya*, cited in the *Vivādabhingārāṇa*, *Saṁhitā* and *Vyākaraṇa*.

*By evidence*, means, that of the attesting witnesses. *By a peculiar mark*, some distinguishing mark, such as *sri*, &c. *By connexion*,—that is, the former relation of money transactions between the parties on account of mutual winning party.” The assessors also shall give it under their confidence ; and by inference is also implied the consideration as to the probability of the receipt of so much property from such a person. These are the means, and the import is, that by these means doubt attaching to a document may be cleared up. But where the doubt as to a writing cannot be cleared up, there recourse must be had to witnesses for the purpose of decision, as *Catyáyana* has declared : “ Where a document is impugned, the claimant must adduce the witnesses named therein.”\* This text relates to a case where the witnesses are forthcoming. But where they are not forthcoming, the text of *Harecta* applies : “ Having impugned a document, by saying, This document was not executed by me, but has been fabricated by him, the decision must be by divine test.”†

19. In answer to the question, what is to be done after the doubt has been cleared up, and payment caused to be made of the debt, if the debtor should not be able to discharge the whole debt, he replies :

XCIH. “ The debtor, having paid by degrees, shall record [the payments] on the back of the document, and the creditor shall write with his own hand the amount of the receipts.”‡

19a. If the debtor is unable to discharge the whole amount of the debt, then, having paid by degrees, ac-

Mode of proceeding where the debtor is unable to

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\* *Virádatandava*.

† *Ibid*.

‡ *Ibid*.

discharge the  
whole debt at  
once.

cording to his ability, he shall record on the back of the original document, So much has been paid by me; or the creditor shall account, on the back of the original document, for the sums realized or received by him, and record that so much has been repaid to him. In what manner? By a record of his own hand, or under his own hand-writing; or the creditor should give to the debtor a written receipt for what has been repaid, drawn up in his own hand-writing.

20. He next proceeds to declare how the document should be disposed of, the whole debt being discharged.

XCIV. "Having discharged the whole debt, he should tear up the writing, or cause another to be executed for acquittance."\*

What is to be  
done after the dis-  
charge of the debt.

20a. Having discharged the debt, whether by degrees or all at once, he should tear up the original writing. But if such writing be in an inaccessible country, or be destroyed, then, for acquittance or putting an end to the debtorship, the debtor should cause the creditor to execute another writing, and in like manner the creditor should give to the debtor a deed of acquittance. This is the meaning.

21. He next declares what is to be done on the discharge of a debt attested by witnesses.

XCIVa. "The repayment of an attested debt should be attested."†

Those who wit-  
nessed the loan,  
should witness re-  
payment also.

21a. One should repay an attested debt in the presence of its former witnesses. Thus ends the chapter of documentary evidence.

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\* *Yājñyavalkya*, cited in the *Vivādatandava*.

† The last stanza of the above text.

## CHAPTER X.

## OF EVIDENCE BY DIVINE TEST.

## SECTION I.

1. The three-fold description of human evidence, writings, witnesses, and possession, have been propounded. Now being about to treat of divine test in its proper place, he states the general definition of a divine test in five texts, commencing with the text: "The balance, fire, water," &c. He now declares, the divine tests,

Five principal  
methods of or-  
deal.

XCV. "The balance, water, fire, poison, and sacred libation, are the divine tests for purgation."\*

1a. According to the sacred code, five ordeals, commencing with the balance, and ending with sacred libation, are to be administered for the purpose of purgation, or the removal of suspicion in a doubtful matter.

2. But [should it be objected,] that there are other ordeals, such as grains of rice, &c., as expressed in the text of *Pitāmaha*, "The balance, fire, water, poison, and sacred libation, and grains of rice, are ordeals. Hot metal forms the seventh mode."† And how then can there be only those enumerated? It is replied, that

There are alto-  
gether seven me-  
thods of ordeal.

XCVa. These are for heavy charges.

\* *Yājñavalkya*, cited in the *Vivādatandava* and *Vyavahāramayuc'ha*.

† *Vivādatandava*,

2a. The restrictive meaning is, that these are for heavy charges, and not otherwise. It is not meant that they are the only ordeals. He will hereafter describe the meaning of a heavy charge. But [should it be objected], that in trifling charges also, the sacred libation is made use of, from the text, "In a trifling case, the sacred libation is to be administered:" it is admitted; but the enumeration of the sacred libation, together with the balance and the rest, is not intended to confine its use to heavy charges, but for the sake of including [its use] in a charge supported by a binding asseveration, otherwise it might be confined to the case of a presumptive charge, from the text, "He should administer the ordeals of the balance and the rest to persons under a charge supported by asseveration, but in cases of presumptive charge, grains of rice and sacred libation: in this there is no doubt."\*

Scales, and the other four methods of ordeal, to be used in certain cases.

3. No distinction having been laid down between heavy charges, whether presumptive or supported by a binding asseveration, in the case of an accuser binding himself to abide by the award [in case of failure], he propounds an exception:

XCVb. "These, the balance and the rest, are for a person accused, where the accuser binds himself to abide by the award."†

3a. The award is the fourth division of the suit, involving defeat or success: by it the penalty is ascertained. Abiding by that, is abiding by the award, and he obtains the penalty annexed to such award.

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\* *Vividatandava.*

† *Yājñawalkya*, cited in the *Vyavahāramayuc 'ha*.

4. "The claimant shall immediately reduce to writing the evidence of the thing to be proved."\* This rule has been propounded relative to a claimant who maintains the affirmative of a proposition. He now propounds an exception :

XCVI. "By consent, either party may have recourse to it. Either may abide by the award."

4a. By consent, that is, by the mutual agreement of the accuser and the accused, either the accuser or the accused may have recourse to ordeal, and either the accuser or the accused may abide by or take on himself the award of corporal or pecuniary penalty. This is the meaning. An ordeal is not like human evidence, confined to an affirmative only ; but it extends indiscriminately both to affirmatives and negatives. So that in the case of a total denial or a special plea, or plea of former judgment, ordeal may be resorted to at the option either of the complainant or defendant.

An ordeal may be resorted to, in proof of a negation, as well as of an affirmation.

5. The ordeal of sacred libation may be resorted to in trifling charges, or heavy charges, or those which are presumptive, or those which are supported by a binding asseveration, indiscriminately. This has been said. But the ordeal of the balance, down to that of poison, is only applicable to heavy charges, and those which are supported by a binding asseveration. But an exception has been propounded to the rule, as far as regards binding asseverations :

Different ordeals applicable to different accusations.

XCVIa. "Let him act without binding himself to abide by the award, in the case of treason against the king, and of a grievous offence."†

\* *Vide supra*, Chap. 1, Sec. 6 ; § 1.

† *Virāḍatambara* and *Vyavahāramayuc'ha*.



5a. Let him have recourse to the balance and other ordeals, without abiding by the award, in an accusation of treason against the king, or in an accusation of killing a Brahmin or other grievous offence; also in an accusation of heinous robbery, as has been declared in the text: "Let an ordeal be administered, without binding by the award, in the case of persons suspected by the king, and those implicated by robbers,\* and those intent on their own justification."† But the ordeal by grains of rice is only for petty thefts, as appears from the text of *Pitamaha*: "The ordeal by grains of rice is to be administered in cases of theft, but not in other cases. This is certain."‡ The ordeal by hot metal|| is to be used in cases of robbery of magnitude, as appears from the text, "The ordeal by hot metal has been propounded for those who are accused of robbery."§

Other divine  
tests described.

6. Moreover, other divine tests are used on trifling occasions. "By his veracity, by his horse or elephant, and his weapons, by his kine, grain, and gold, by the deities, by his ancestors, and by [the relinquishment of the fruit of] virtuous actions; or let him touch the heads of his children, and wife, and intimates, or in an accusation admitting of it,¶ the sacred libation."\*\* These divine tests propounded by *Mennu*, are declared by *Náreda* and others to

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\* Although from the fact of robbers being unworthy of belief, the mere implication by them should not raise suspicion, yet as the term, "of those implicated by robbers," has been used in conjunction with "persons suspected by the king," suspicion is excited.—*Subodhini*.

† Cited as the text of *Náreda* in the *Vivádatandava*.

‡ Ibid.

|| This ordeal, called *Tuptamasha*, is performed by taking gold or other metal from clarified butter while hot.

§ Ibid.

¶ The printed copy of the *Mitácshara* has it *Surveshoo*, in all accusations; but the true reading, as explained by *Subodhini*, is *Suhyeshoo*, admitting of it.

\*\* *Náreda*, cited in the *Vivádatandava* and *I'yavaháramayuc'ha*.

be applicable to trifling occasions. Should it be asserted, that ordeal is a means of decision where human evidence is not to be resorted to, and that oaths are, according to popular acceptation, ordeals, [it is replied,] there has been a distinction propounded between these and the ordeals of the balance, &c., the effect in the latter case being immediate, and, in the former, future, as in the terms *Brahmin* and *Puribrajuka*.\* But the sacred libation, though enumerated among oaths, is classed with the ordeal of the balance, &c., not because the effect of it, in common with the ordeal of the balance, &c., is immediate, but because, in common with those, it is applicable to weighty charges, and charges supported by a binding asseveration. But the ordeal by grains of rice and hot metal are not classed with the ordeal of the balance, &c., although the effect of both modes is immediate, because they are applicable to trifling occasions and presumptive charges. These ordeals and divine tests are to be resorted to in cases of debt and other occasions, according to circumstances.

Distinction between an oath and an ordeal.

And between different kinds of ordeal.

7. But the text of *Pitamaha*, "In actions relative to

Text of *Pitamaha* explained.

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\* The import of this illustration is, that ordeals and oaths are not convertible terms. The meaning has been thus explained by *Subodhini*: "As the separate mention of the term *Puribrajuka* indicates another purpose, so the separate mention of oaths indicates, that they are intended for another purpose. That purpose has already been declared, [in assigning their use to trifling occasions,] or the meaning of the use of the terms *Brahmin* and *Puribrajuka* may be thus exemplified. Invite a *Brahmin*, and invite a *Puribrajuka*. In this sentence, by the mere injunction to invite a *Brahmin*, the injunction to invite a *Puribrajuka* also may be comprehended, [inasmuch as all *Puribrajukas*] or *Suniasces* are *Brahmins*, though all *Brahmins* are not *Puribrajukas*; and the separate injunction to invite a *Puribrajuka*, proves that the *Brahmin* and the *Puribrajuka* must be considered as distinct individuals. So also in this instance, although the balance and the rest, and oaths, may both be comprehended under the designation of ordeal, yet, from the separate use of the terms oath and ordeals, the term ordeal must be considered as distinct from the oath, and as relating to the balance and other similar ordeals.

immoveable property, ordeals are to be avoided,"\* is explained by the interpretation, that they are to be avoided, in case documents and neighbouring witnesses are forthcoming. Should it be objected, that in other actions also, recourse cannot be had to ordeals, where there exist other means of proof,—it is admitted : but in actions for debt and the like, should witnesses of the prescribed qualifications be adduced by the plaintiff, and should the defendant bind himself to abide by a penalty and rely on an ordeal, then an ordeal may be resorted to, because there may be the fault of partiality in witnesses, and because there cannot be any fault in an ordeal, from its being an indication of the reality and an emblem of justice, as *Náreda* has declared : "Justice consists in truth, and litigation [is dependant] on witnesses. In a case admitting of divine test, recourse need not be had to oral or documentary evidence."† The text of *Pitamaha* is propounded, not for the purpose of excluding ordeals altogether, but for the purpose of excluding the supposition, that in actions relative to immoveable property, the decision by ordeal may be resorted to by a defendant, who binding himself to abide by a penalty, relies on ordeal, there being documents and neighbouring witnesses. Should this not be [the interpretation,] then in actions relative to immoveable property, there could be no decision in the absence of documents and neighbouring witnesses.‡

8. Moreover :

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\* *Vivádatandava* and *Vyavaháramayúcha*.

† *Vivádatandava*.

‡ The meaning is, that in actions relative to immoveable property, when the plaintiff adduces documents or the evidence of neighbouring witnesses, the defendant cannot have recourse to an ordeal ; but in the absence of such evidence, he may have recourse to an ordeal in actions relative to immoveable property, notwithstanding that the plaintiff adduces other evidence.

XCVII. "Having called the person, fasting, at sunrise, who has bathed with his clothes on, let him administer all ordeals in presence of the king and of Brahmins."\*

8a. The judge shall administer the ordeals, having called the person who has subjected to them in the morning, at sunrise, fasting, having bathed, in his clothes, in the presence of the king and of the attendant Brahmins. "Ordeals are to be administered for purgation always to a person fasting for three nights, or fasting for one night."† The difference here propounded by *Pitamaha* as to the degree of fasting must be regarded in practice according as the matter is grave or trifling, great or small. The rules regarding fasting, should be applied also to the officiating chief judge, from the text of *Nāreda*: "Let the chief judge transact all matters by ordeal, fasting, in the same manner as sacrificing priests conduct sacrifices by order of the king."‡

Ceremonies to be observed with respect to ordeals in general.

9. Although the time of sunrise is here propounded without distinction, yet, by approved practice, ordeals are to be administered on Sundays. "In the morning the ordeal of fire, in the morning the ordeal of the balance must be administered, in the forenoon that of water must be administered, by a person desirous of discovering the truth. The purgation by sacred libation is propounded for the first part of the day. In the latter part of the night, when it is very cool, the ordeal by poison must be administered.¶ These distinctions propounded by *Pitamaha* must be observed. As no

Different times propounded for different ordeals.

\* *Vivādatandava*.

† *Ibid*.

‡ *Pitamaha*, cited in the *Vivādatandava*.

¶ *Vivādatandava* and *Vyavaharamayuc'ha*.

particular time has been propounded for the ordeals of grains of rice and hot metal, they must be administered in the morning, from the following general injunction of *Náreda* : “ The administering of all ordeals has been declared proper in the morning.”\*

Particular seasons  
enjoined for parti-  
cular ordeals,

10. The day being divided into three parts, the first part is termed the morning, the second, the forenoon, the third, the evening. The distinction of time must depend on the cases of the injunction or prohibition. The cases of injunction [are now declared.] The frosty and cold seasons, and the rainy seasons, are declared [the proper times] for [administering the ordeals by] fire. Water in the autumn and summer season. Poison in the frosty and wintry, and in the months of Cheyt, Aghun, and also Bysakh ; these three months are common, and not adverse to any ordeals. Sacred libation may be given at all times ; and the balance is not confined to any particular period.”† The use of the term sacred libation, is intended to include all oaths. As no distinction has been propounded for [the ordeal of] grains of rice, it is not limited to a particular period.

Particular sea-  
sons prohibited.

11. The cases of prohibition are as follows :—“ Purgation should not be by water in the cold weather ; nor should purgation be by fire in the warm weather ; nor should one administer [the ordeal by] poison in rainy weather, nor that of the balance in windy weather ; nor in the afternoon, nor in the evening, nor in the middle of the day.”‡ The word “ cold,” mentioned in the text, “ Purgation should not be by water in the cold weather,” includes the wintry, frosty, and rainy seasons. The word “ warm,” mentioned in the text,

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\* *Vivádatandava*.

† *Náreda*, cited in the *Vivádatandava*, but *Pitamaha* in the *Vyasa-  
hárámayuc'ha*, excepting the last hemistich.

‡ *Náreda*, cited in the *Vivádatandava*.

“Nor should purgation be by fire in the warm weather,” includes the summer and autumn season. Although the injunction was before laid down, the prohibition is used for the sake of giving greater effect. The object will be hereafter propounded. He now treats of the condition of the persons.

XCVIII. “Ordeal by balance is declared for women, minors, old men, blind and lame persons, Brahmins, and sick persons. Fire or water, or seven barley corns of poison, for a man of the servile tribe.”\*

Ordeals for particular persons.

12. The term *women*, implies females in general, without respect to distinction of tribe, age, or condition. The term *minors*, signifies one who has not attained his sixteenth year, without respect to tribe. *Old men*,—those who have passed their eightieth year. *Blind*,—deprived of vision. *Lame persons*,—whose feet are useless. *Brahmins*,—persons of that tribe generally. *Sick persons*,—those afflicted with disease. The [ordeal by] balance alone is declared fit for the purgation of these. A red-hot ploughshare, or hot metal for a *Cshetrya*, and water for a *Vaisya*, as appears from the disjunctive term “or.” Seven barley-corns of poison are for the purgation of a man of the servile tribe; and from the declaration of the balance being for *Brahmins*, and from the declaration in the text, “or seven barley corns of poison,” that poison is the ordeal for a *Sudra*, it is proper to apply the ordeals of fire and water to *Cshetryas* and *Vaisyas*. This has been explicitly declared by *Pitamaha*: [“Ordeal by] balance is to be administered to a *Brahmin*, and fire to a *Cshetrya*. Water is declared for a *Vaisya*; and one should cause the [ordeal by] poison [to be administered to] a *Sudra*.”† But

\* Cited as the text of *Yājñyavalkya* in the *Virādatandava* and *Vyavahīramaguc'ha*.

† *Virādatandava*.

the text depriving females of ordeal, namely, "When the truth is sought after, an ordeal will not be administered to those who are doing penance, or severely afflicted, or sick, or devotees, and women,"\* has been recited for the purpose of taking away the alternative [allowed in other cases], namely, "By consent, either party may have recourse to it."† It has moreover been declared: In charges accompanied by a binding asseveration, women and the like being the parties charged, the ordeal is to be administered to those making the charge; and where these [that is to say, women] are the parties making the charge, the ordeal [is to be administered] to the party charged; but where they mutually accuse each other, there is an option: and here also [the ordeal by] balance alone is enjoined for women. It appears also from the explanation of the same text, that the balance alone is for women and others in presumptive charges of weighty and other offences; but the text becomes applicable by restricting the ordeal of women by balance to the months of Cheyt, Aghun, and Bysakh, which are applicable to all ordeals and not [by interpreting it that the ordeal by] balance alone is at all times [proper] for women. This appears from the text, [The ordeal by] "poison has not been declared for women, nor has that by water been propounded; by the balance, by the sacred libation, and the rest, their hidden secrets must be explored,"‡ which enjoins the balance, sacred libation, fire, &c, excluding poison and water. The same rule is appli-

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\* *Nārada*, cited in the *Vivádatandava*.

† See verse 4. In other words, where women and the other persons specified are either party in a cause, it shall not be optional for either party to have recourse to ordeal; but the ordeal should be resorted to by the party, who may not be involved in the disqualifying text. But where both parties are women, or fall under any other of the specified exceptions, there the general rule applies.

‡ *Nārada*, cited in the *Vivádatandava*.

cable to minors, and the others [enumerated.] The injunction as to the use of the ordeal by balance, &c., for Brahmins and the rest, is not to make it alone admissible at all periods, as is evident from the text of *Pitamaha*: "The purgation by sacred libation is declared applicable to all tribes. All these are declared applicable to all, except poison to Brahmins."\* Hence the text has been propounded for the purpose of determining that the ordeal is to be by balance, &c., in a period which is common to all ordeals, and where many ordeals would be admissible.†

13. But at any other period, the ordeal appropriated to that period for all. In the rainy season, fire alone is for all. In the wintry and frosty seasons, there is an option either of fire or poison, to *Cshetryas* and the other two tribes, but only fire to Brahmins, and never poison, from the prohibition, "except poison to Brahmins." In the autumn and summer seasons, only water. But to such as are afflicted with a peculiar disease, in which the use of fire and water is prohibited, such as those described in the following text, "Let one keep away fire from leprous persons, and water from the feverish, and let one keep away poison from those oppressed with bile

Continuation of  
the subject.

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\* *Vivádatandara and Tyarahóramryucha.*

† This explanation is rather tortuous. The meaning, however, is this. The general injunction is, that during three months of the year, (Cheyt, Aghun, and Dysakh,) any mode of ordeal is admissible. The particular injunction follows, that to women, Brahmins, &c., the purgation by balance alone should be administered. There are other texts, however, which declare that any ordeal, except poison and water, may be administered to women, and that any except poison may be administered to Brahmins. It becomes, therefore, necessary to reconcile these conflicting texts, which is done by stating, that in the three months above specified the ordeal by balance alone should be administered to women, Brahmins, and the rest. By the same rule, in those months, fire should be the ordeal for a *Cshetrya*; water for a *Vaisya*, and poison for a *Sudra*.



and phlegm :”\* to them, even at the proper time for fire and other ordeals, let the ordeal of the balance, and others which are common to all times, be administered. “Water, fire, and poison must be administered to persons in health.”† From this text it is inferrible, that to them, as well as to weakly persons, the ordeals suitable to the tribe, condition, and age of the parties are to be administered, without contravening the seasons and periods fixed by the injunctions and prohibitions.

14. It has been declared,‡ “These are for heavy charges.” He now explains what constitutes a heavy charge.

XCIX. “One should not take a [red-hot] ploughshare under a thousand, nor poison, nor the balance.”

What is termed  
a heavy charge.

14a. One should not administer the ordeal of a ploughshare, of poison, or of the balance, under a thousand *panas* : nor that of water, which is included, as has been declared : “In heavy charges, one should cause to be administered the ordeal of the balance, down to that of poison.”|| In such cases, that of sacred libation should not be resorted to, from the text, “In a trifling case, sacred libations are to be administered.”§ The above four¶ ordeals are to be administered in cases where [the subject matter] exceeds a thousand *panas*, but not under. This is the meaning.

Objection repli-  
ed to.

15. But [should it be objected], that fire and the other [three] ordeals have been declared by *Pitamaha* applicable to cases under a [thousand] in the following text, “One

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\* *Hareeta*, cited in the *Vividatandava*.

† *Vividatandava*.

‡ Verse 2.

|| *Veeramitrodaya*.

§ Ibid.

¶ That is, the ploughshare, poison, the balance, and water.

should administer the balance in the case of a thousand; in the case of half a thousand, iron; in the case of half the moiety, water. Poison is declared applicable in the case of half of that.”\* It is admitted, but the text of *Pitamaha* applies to a case where the taking involves degradation, and the text of *Vijnyaneswara* applies to other cases. This is the practice, and these two texts apply to cases of robbery and aggression.

16. A distinction has been propounded by *Catyáyana* in the case of a denial. “In the case of a denial of receipt, evidence must be resorted to. But in cases of robbery and aggression an ordeal may be administered, even though the subject be trifling.”

Distinction in civil and criminal cases.

17. Having ascertained the amount of all the property, it should be made into gold, [that is] having ascertained the number of the *suvernas*,—if a hundred be lost, poison has been declared the ordeal; and also if eighty have been lost, fire. If sixty have been lost, water is to be administered; or if forty, the balance; and sacred libation is propounded in the case of the loss of twenty or ten. In case of the loss of five or more, or half, or a quarter of that number, grains of rice. In a case involving the loss of half or a quarter of that again, let him, the deponent, touch the heads of his sons or other relations. But in a case involving the loss of half or a quarter of that again, the usual means have been enjoined. A king so distinguishing suffers no injury spiritually or temporally.”†

And with reference to the amount of the suit.

18. “Having ascertained the number of *suvernas*,” &c. Here the term *suverna* means sixteen *mashas*; and the word *suverna* is used to signify the quantity above specified. The

Explanation of the above text.

\* *Vecramitrodaya*.

† *Vicadatandara*.

term loss here is intended to suppose denial. "One should not take the ploughshare under a thousand."\* This must here be understood to mean a thousand copper *panas*.

19. But should it be objected, that in accusations of treason against the king or other grievous offence, these ordeals have been ordained: how then can the text, "He should not take the ploughshare under a thousand," apply? It is replied:

XCIX<sub>a</sub>. "Where the king is a party, and the accusation is grave, being pure, they should always take these ordeals:"†

19<sub>a</sub>. In accusations of treason against the king or other grievous offence, being purified by fasting and the other means, they should perform these ordeals, without reference to the amount of the property (involved).

20. The particulars as to place have been detailed by *Náreda*. In a public assembly, in the gate of the king's palace, in the temple of the deity, and in the plain. It must be fixed, immoveable, and worshipped with frankincense, chaplets of flowers, and ointments. It—the balance, must be fixed.

21. The situation has also been detailed by *Catyáyana*. "Let him establish it in *Indra's* place of worship for those accused of weighty offences and grievous sinners: at the king's gate for those intending treason against the king. The ordeal must be given where four roads meet, to those born in the inverse order of the tribes; and in other cases,

\* Vide *supra*, § 11.

† This is the second hemistich of the text commencing, "One should not take," &c.

let the ordeal be given in the midst of the assembly. This let the wise know. The decision should not be made by the king, in the case of those offenders who serve persons unfit to be touched, and vile, or of barbarians. In a case of doubt, he should administer to those the ordeals in common use among them.

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SECTION II.\*

*Of the Ordeal by Balance.*

1. Having treated of the introduction to ordeals, which applies to ordeals of every description, he now propounds the nature of the ordeals by the balance and the rest.

Mode of proceeding with respect to.

C. "The accused being placed in the balance by persons acquainted with the mode of holding the scales, and being balanced by an image, a line having been made, and (the accused) being taken down, he should invoke the balance with the following prayer.

CI. 'Thou, O balance ! art the mansion of truth : thou wast constructed of old by the gods ; then, O fortunate one, declare the truth, and relieve me from suspicion.

CII. If in this I did commit a crime, O mother !

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\* Some apology is perhaps necessary for exhibiting to the public the puerilities contained in the following pages, but the account has been given with the view of showing the entire system. The substance of the doctrine of Hindu ordeals is contained in the first volume of the Asiatic Researches, and from that publication the account has been transferred to the Encyclopædia Britannica, in which there is a curious description of the ordeals in use in former times and by other nations.

then do you bring me down ; but if I am innocent, lift me up.' ”\*

Interpretation of  
the text,

2. By goldsmiths and others, who are familiar with the practice of holding the scales or weighing by them, the accused or the accuser, or he who is about to undergo the ordeal, being balanced or brought to a level, by means of an image, made of earth or other materials, and being placed or seated on the scales, having made a line, or having drawn a chalk-mark in the vicinity of the place where he (the weigher) stands, under the strings of the balance, while in the act of balancing by means of the image, and being taken down, he should invoke the balance, or should pray to it with this invocation :—“ O balance ! thou art the abode of truth.” “ *Of old*,”—in the beginning of the creation. “ *By the gods*,”—by *Hiranyagurbha* and other deities. “ *Wast constructed*,”—or created. “ *Then*,”—or therefore declare “ *the truth*,”—or show the real nature of a doubtful matter. “ *O fortunate*,”—or O propitious ! relieve me from this suspicion. O mother ! “ *if I did commit a crime*,”—or if I utter a falsehood, then bring me down ; but “ *if I am innocent*,”—or speak truth, then lift me up.”

Invocation to be  
used by the party  
undergoing the  
ordeal.

3. The invocations are specified by other authorities, which are to be used by the chief judge when invoking the balance. That which has been stated, applies to the person about to undergo the ordeal. As that which constitutes success or defeat may be understood from the terms of the invocation, it has not been separately treated of. But the construction of the scales, the mode of ascending them, and other matters requiring explanation, have been clearly treated of by *Pitamaha*, *Náreda*, and others.

Tree to be cut

4. “ Having cut down a tree suitable for sacrifice with a

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\* *Fájnyswaleya*, cited in the *Divyatatwa* and *Vecramitrodaya*.

*muntra*, and using the formula as to a sacrificial pillar, (*Toopa*), and having made obeisance to the regents of the world, (*Lokapalas*), the balance should be constructed by intelligent persons. The *muntra* of *Soma*\* must be repeated at the time of cutting down the trees.”†

down with certain ceremonies.

5. “The (beam of the) balance should be made equilateral, strong and straight; and three rings should be attached in three places, as necessary. The (beam of the) balance should be made four hands long, and the two posts (to which it is attached) should be made equal to it (in dimensions.) The intervening space between the two posts should be two hands, or one hand and a half. Both posts should be fixed under ground (in depth) two hands. Two (*Toranas*) or cross bars should be fastened to each side of the posts; but these must always be placed ten fingers higher than the scales. Two *Abalumbas* or perpendiculars should be attached to the cross bars, made of earth, secured with string, and hanging down so as to touch the top of the scales or basons. The balance must be placed to the eastward, immoveable, and in a purified place.”‡

Method of constructing the balance.

6. “Having adjusted the two strings to both the extremities (of the beam), he should place *Cusa* grass in each of the scales in an easterly direction. He should place the person who is about to undergo the ordeal in the western scale or bason, and pure earth in the other side. He should cause the cavities of the basons to be filled up with brick-dust, gravel, or earth.”|| The mention of brick-dust, gravel, or earth, shows that either of them may be used. “Examiners should be appointed, who are acquainted with the manner

Method of weighing.

\* *Soma* or the moon, being the god of the woods.

† *Pitamaha*, cited in the *Divyatatva* and *Vecramitrodaya*.

‡ *Ibid*.

|| *Pitamaha*, cited in the *Divyatatva*, but *Nāreda* in the *Vecramitrodaya*.

of weighing, as traders, goldsmiths, and braziers. The duty of the examiners is to see that the perpendiculars and the basons are even. Water should be placed in the scales by *Pundits*, and, if the water does not flow over, it may then be considered that the balance is level. Having first weighed the individual, let him then be taken down.”\*

Forms and ceremonies to be observed on the occasion.

7. “The balance should also be decorated with banners and flags; afterwards the person acquainted with the meaning of the formula should invoke the gods; the offerings of perfumes, garlands, and sandal ointments having been presented in the prescribed mode, accompanied by the music of the *Valitra*† and *Tooryaya*.‡ The chief judge, facing the east, with hands folded, should thus speak: ‘O *Dharma*, enter into this ordeal with all the regents of the world, (*Lokapalas*), *Vasus*,|| *Adityas*,§ and *Marutas*.’”¶

Worship of the regents of the world.

8. “Having first invoked *Dharma*, or the god of justice, to enter into the balance, he should then call on the *Angas*, or subordinate deities. Having placed *Indra* on the east, and *Pretesa*\*\* on the south, *Varuna* on the west side, and *Cuvera* on the north; *Agni*, and the other regents of the world, he should place on the intermediate points (of the compass.) The colour of *Indra* is yellow, of *Yama* dark blue, of *Varuna* white as crystal, of *Cuvera* golden, and *Agni*

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\* *Pitamaha*, cited in the *Veeramitrodaya* and *Divyatatwa*.

† A sort of musical instrument, of which four species are reckoned, as wind instruments, stringed instruments, &c.

‡ A sort of musical instrument.

|| A *Vasu* is one of the eight divinities who form a *Gumna*, or assemblage of gods; and there are nine of these *Gumnas*. As. Res., p. 40, vol. iii.

§ The twelve *Adityas* are said to be the offspring of *Aditi*, who is called the mother of the gods. They are emblems of the sun for each month of the year.

¶ *Marutas*, or genii of the winds.—See Moor’s Hindu Pantheon, p. 93.—*Pitamaha*, cited in the *Veeramitrodaya* and *Divyatatwa*.

\*\* *Yama*, or literally, the lord of departed spirits.

also golden, of *Nirriti* dark blue.—*Fayu* is celebrated as being of a purple or smoky colour, and *Isana*,\* is of a red colour. These must successively be thus meditated on.”†

9. “The wise should worship the *Vasus* on the south side of *Indra*. *Dhara*, *Dhrura*, *Soma*, *Apa*, *Anila*, *Anala*, *Pratyusha* and *Prabhasha*; these eight are termed *Vasus*.”‡

Of the *Vasus*.

10. “A site for the *Adityas* should be made between those of *Indra* and *Isana*. *Dhata*, *Aryayama*, *Mitra*, *Varuna*, *Ansa*, *Bhaga*, *Indra*, *Vivaswan*, *Pusha*, *Paryanna*, these ten, and *Twashtha* and *Vishnu*, the elder and the younger born: these are the names of the twelve *Adityas*.”||

Of the *Adityas*.

11. “The wise should make a site for the *Roodras*§ on the west of *Agni*. *Virabhadra*, *Sumbhoo*, *Grisa* who is most famous, *Ajaicapuda*, *Ahi*, *Budhnya*, *Pinakee*, *Aparajita*, *Bhoovanadhiswara*, *Capali*, termed *Vishampati* or lord of

Of the *Roodras*.

\* *Divyatatwa*, that *Isana* is of a white colour.

† *Pitamaha*, cited in the *Veeramitrodaya* and *Divyatatwa*.

‡ *Pitamaha*, cited in the *Divyatatwa*.

|| *Pitamaha*, cited in the *Divyatatwa*.—It is recorded in the *Puranas*, that the twelve *Adityas* were begotten by *Casyapa* on his wife *Aditi* in a *Culpa*, and their names correspond with the above, with the exception of *Vishnu*, *Paryanna*, *Ansa*, and *Indra*, instead of which they are read *Savita*, *Vidhata*, *Sakra*, and *Urucrama*; and in another *Culpa*, *Sunga*, the daughter of *Vishvacarma*, was married to *Aditya*, and as she was unable to endure her husband's splendour, she complained to her father, who made him (the *Aditya*) into twelve pieces, each of which appears to represent him as *Surya* or the sun, distinct in each month of the year. It is mentioned in the *Adityahridaya*, that *Aroona* appears in the month of Magh; *Surya* in Falgun; *Vedunga* in Chait; *Bhanoo* in Bysakh; *Indra* in Jeth; *Rabi* in Asarh; *Gab'husti* in Sawun; *Yama* in Bhadoon; *Soovurnarcta* in Assin; *Divacara* in Cartic; *Mitra* in Aghun; and *Vishnu Sunatana* in Poos. The legend is related differently by Ward. See vol. ii, p. 45; and Moor, Article, “*Aditya*.”

§ See Moor, Article, “*Roodra*.” The *Roodras* are distinctions of *Siva* in his character of fate or destiny.



the *Vaisyas*, and *Stk'hanurbhava* ; these are the eleven *Roodra* deities."\*

Of the *Matris*. 12. "The abode of *Matris* should be made between that of *Pretesa* and the *Racshas* :† *Brahmi*, *Maheswari*, *Caumari*, *Vaishnuvi*, *Varahi*, *Mahendri*, and *Chámunda* attended by her *Ganas* or train : (these are *Matris*)."‡

Of *Gunes*. 13. "The wise should make an abode for *Gunes*|| on the north of *Nirriti*."§

Of the *Marutas*. 14. "The site of the *Marutas* is said to be on the north of *Varuna*—*Gayana*, *Sparsana*, *Vayu*, *Anila*, *Maruta*, *Pran*, *Pranes*, and *Jiva* ; these eight are called *Marutas*."¶

Of *Doorga*. 15. "The wise should invoke *Doorga* on the north of the balance ; and all these deities should be worshipped by their respective names."\*\*

Offerings to be presented. 16. "Having made offerings, beginning with *Arghya*,†† and ending with ornaments, in the first place to *Dharma* :

\* *Pitamaha*, cited in the *Divyatatwa*.

† The *Racshas* are a species of evil genii, generally engaged in malignant combinations ; not however always.—Moor's Pantheon, p. 96.

‡ *Pitamaha*, cited in the *Divyatatwa*.—The eight *Sactis*, or energies of as many deities, are also called *Matris* or mothers. They are named *Brahmi*, &c., because they issued from the bodies of *Brahma* and the other gods respectively. (*Raya Mucuta* on the *Ameracosha*.) In some places, they are thus enumerated : *Brahmi*, *Maheswari*, *Aindri*, *Varahi*, *Vaishnuvi*, *Caumari*, *Chámunda*, and *Charchica*. However, some authorities reduce the number to seven ; omitting *Chámunda* and *Charchica*, but inserting *Cauveri*.—See *As. Res.*, p. 82, vol. viii.

|| The god of prudence and wisdom.

§ Regent of the south-west quarter.—*Pitamaha*, cited in the *Divyatatwa*.

¶ *Pitamaha*, cited in the *Divyatatwa*.

\*\* Ibid.

†† An *Arghya* : that is, water, rice and *durvā* grass in a conch, or in a vessel shaped like one.

then the offering beginning with *Arghya* and ending with ornaments should be made to the *Angas*. Next the offerings beginning with perfumes and ending with food should be presented to them.”\*

17. Having decorated the balance with flags and banners, *Dharma* should be invoked with this incantation, (*Ahyahi*), Approach! Approach! Then having pronounced this *muntra*, *Dharmayarghyaum praculpayami numa*, or I present this *Arghya* to *Dharma*: after this *Arghya*, *Padya* (water for cleaning the feet, &c.), *Achmani* (water for sipping,) *Madhu-parca*,† then *Achmani* again, *Snan* (water for bathing), dress, the sacrificial cord, then *Achmani* again, the *Cataca* or ring, *Mukuta* or crest, and other ornaments should be presented to *Dharma*: then having repeated the *muntra*, beginning with the word *Pranava*, and ending with *Numa*! the presents, beginning with *Arghya*, and ending with ornaments, should be offered in succession to the other deities, beginning with *Indra* and ending with *Doorga* in their respective names in the fourth case; afterwards having offered perfumes, flowers, incense, lamps, food-offerings, and the like to *Dharma*, then the perfumes, &c., are to be offered, as above stated, to *Indra* and the other deities. For worshipping the balance, the perfumes, flowers, &c., must be of a red colour, as *Náreda* says:—“ Having first worshipped the balance with the offerings of red perfumes, garlands, curds, fried rice, &c., then the other deities should be worshipped.” As no particular mention has been made regarding *Indra* and the other deities, they may be worshipped with offerings of every colour, whether red or otherwise, as procurable.—This is the order of worship.

Mode in which  
the worship is to  
be performed.

\* *Pitamaha*, cited in the *Diryatatwa*.

† This is made with honey, curds, and butter in a vessel of *sinc*.

Qualifications of  
the officiating  
chief judge.

18. These acts must be performed by the chief judge, as has been declared :—"The chief judge,—who should be a Brahmin, learned in the *Vedas* and *Vedangas*, familiar with religious observances, as ordained by the *Sruti*, even-minded, devoid of passion, devoted to truth, pure, able, benevolent, universally charitable,—fasting, clothed in purified garments, and with cleansed mouth, should, according to the prescribed mode, worship all the deities."\*

The *Gayatri* to  
be repeated.

19. By four (*Rriticas*) or family priests, seated on the four sides of the balance, the *homa* should be performed on the (*Lowkicagni*) or domestic fire,† as has been declared :—"The burnt offering (*homa*) should be presented on four sides by the learned in the *Vedas*; the *homa* should be performed with the presents of *Ajya* (clarified butter,) *Habisa* (rice boiled with milk,) and *Samida* (small branches of certain trees); the *homa* should be celebrated with the *muntra*, beginning with *Savitri Pranava* and ending with the word '*Swaha*.'"‡ Having pronounced the *Savitri Gayatri*, and then the *Gayatri* beginning with the word *pranava* and ending with the word *Swaha*, the *homa* should be performed by offering the *Ajya*, *Charoo*, and *Samida*, one hundred and eight times severally.—This is the meaning of the text.

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\* *Pitamaha*, cited in the *Divyatatwa*.

† Radhacant Deb in his Sanscrit Lexicon observes :—*Agni* was first begotten by *Dharma* on his wife named *Basu*. *Agni* espoused *Swaha*, of whom were born *Pavaca*, *Pavamana*, and *Suchi*. In the sixth *Munvantara*, *Dravinaca* and others were begotten by *Agni* on his wife *Basudhara*, and forty five *Agnis* were procreated by *Dravinaca* and others, sons of *Agni*. They are altogether forty-nine in number. In particular religious observances and ceremonies, *Agni* is to be invoked by several names, thus in *Lowkica* or worldly affairs, such as entering into a new house, and the like, *Agni* is termed *Pavaca*, &c. &c.

‡ *Divyatatwa*.

20. After the completion of the worship of the deities, ending with the burnt offering, a document should be prepared, containing the matter alleged [against the party about to undergo the ordeal,] together with the following *muntra*; and that document should be put on the head of the person accused; as is said:—"The matter of which the person is accused should be written down with this *muntra*, and that [the document] should be placed on the head [of the accused.]"\*] The *muntra* is:—"The sun, moon, wind, fire, heaven, earth, water, mind, *Iama*, day, night, both (morning and evening) twilights, and *Dharma*, know the actions of men."†

The accusation should then be written with a *muntra*, and placed on the head of the accused.

21. These forms, beginning with the invocation to *Dharma*, and ending with placing the written charge on the head, are applicable to all ordeals; as has been declared:—"All these formulæ he should apply to all ordeals: so the invocation of the gods should be made in the same manner."‡

The above ceremonies applicable to all ordeals.

22. Afterwards the chief judge should invoke the balance from the text:—"The person who knows the *muntra* should, according to the prescribed mode, invoke the balance."|| "*Who knows the muntra*," that is, who is acquainted with its meaning. "O balance, thou wert created by *Brahma* for the detection of evil-doers, by the letter *d'ha* thou art the image of *Dharma*, and, by the letter *tha* it appears that, holding the vicious, thou revealest their acts, on account of which thou art named *D'hatha* or balance. Thou knowest the virtues and vices of all created beings. Thou only knowest all, and those things which mortals do not know. This person wishes to be relieved from the suspicion in which

Invocation by the chief judge.

\* *Divyatalwa.*

† *Ibid.*

‡ *Ibid.*

|| *Ibid.*

he is involved, as thou, by thy virtue, art competent to extricate him from the difficulty.”\*

The person about to undergo the ordeal, should also invoke before being weighed.

23. The person who is about to be examined, should invoke the balance with the text formerly recited, (“Thou, O Balance,” &c., § 1.) and afterwards the chief judge should place the person who is about to undergo the ordeal, and has taken the written charge on his head, in the same place; that is, in the mode according to which he was first placed in the scale; as has been said:—“The person who has taken the written charge on his head, should be again placed in the scale.”†

Period of weighing.

24. Having been placed in the scale, he should be kept in it during the period of five *binarhis* complete. Persons learned in astronomy should be appointed to compute that period, as the text declares:—“The Brahmins who are eminently skilled in astronomy, should be appointed for the purpose of computation, and by those, the time of examination must be considered as five *binarhis*.”‡ The time taken for articulating ten hard letters makes a *pran*: six *prans* make a *binarhi*; as is said:—“[The time of pronouncing] ten hard letters is a *pran*, six *prans* are one *binarhi*.”|| Sixty *binarhis* are one *ghatica*: and sixty *ghaticas* are one day and night, and thirty days are one month.

What persons should be appointed, to decide as to the question of guilt or innocence.

25. Purified persons should be appointed by the king, to examine during such period into the guilt or innocence of the accused, and they should pronounce as to his innocence or guilt; as has been said by *Pitamaha*:—“Brahmins are the most excellent of witnesses. They, being speakers of

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\* *Dīnyatatva* and *Vecramitrodaya*.

† Ibid.

‡ *Dīnyatatva*.

|| Ibid.

truth, according to the real state of the case, learned, purified, and uncovetous, should be appointed as evidence by the king; they should represent to the king regarding the guilt or innocence of the accused.”\*

26. The rule for ascertaining the guilt or innocence is thus propounded :—“No doubt, should the person balanced go up, his innocence is established; if he be level, or come down, then he is not innocent,”† An exception to this rule is declared by a text of *Pitamaha* :—“A slight crime brings level, and a heavy one takes down.”‡

Rule for ascertaining the point.

Exception.

27. The meaning of this is, that though it cannot be ascertained by the ordeal, whether the matter charged be light or heavy, yet that [the offence] having been committed once only and unintentionally, renders it light, and its having been repeatedly done and intentionally, renders it heavy; and thus the rule of slight and heavy amercement and penance may be ascertained.

Explanation of the exception.

28. Where, without any known or visible cause, the *Cácsa* and the like are cracked or broken, guilt is established. The text declares :—“In case of the *Cácsa* breaking, or of the splitting of the beam and basons of the scale, or of the *Carcatas*, or the bursting of the strings, or of the *Acsa* breaking, the guilt of the person is evidenced.”||

Other evidence of guilt.

29. “*Cácsa* signifies the bottom of the string; *Carcata*, the rings bent like the horn of a ram, attached to each extremity of the beam to which the strings are fastened; *Acsa*, the transverse beam fixed to the two pillars, from

Explanation of the terms.

\* *Divyatalwa*.

† *Ibid*.

‡ *Ibid*.

|| *Ibid*.

z. 2

Distinction.

which the scales are pending. If these, however, are broken by any visible means, the person must be again placed in the scale; a text says:—"At the breaking or splitting of the strings or other parts of the balance, he should cause the person [the accused] to be re-placed in it."\*

Fees to be paid to the officiating priests.

30. He should then cause the *Rriticas*, *Purohitas*, and *Acharyas*, or sacrificial priests, to be satisfied with their fees. "The king who performs such acts, having tasted the most delicious enjoyments, acquires eminent fame and becomes identified with *Bramha*."†

Precantion to be adopted when the scales are required for future use.

31. If he wish to establish the balance, as above described, in the same place [for future use], he must build a hall with shutters and the like, to prevent the entrance of crows and other animals, as the text declares:—"He should cause to be erected a large, elevated, and white balancing-hall, situated in a place in which it may not be injured by dogs, *Chandalas*, and crows. He should surround the house with the *Lokapalas*, or regents of the world, and other deities; and they [the *Lokapalas*] must be worshipped thrice in the day, with perfumes, garlands, and sandal ointments. He should cause the house to be made with shutters, filled with seeds, guarded by servants, and containing earth, water, and fire, so as not to be empty."‡ "Seeds," grains of the barley, rice, and the like.—Thus has been declared the ordeal by  
nce.

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\* *Divyatalwa*.

† *Ibid*.

\* *Pitamaha*, cited in the *Veeramitrodaya*.

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## SECTION III.

*Of the Ordeal by Fire.*

1. He now declares the [ordeal by] fire as next in order.

CIII. Having his hands rubbed with rice, he should place seven leaves of the *Ashwaththa*\* tree, and should tie them with so much thread."†

Forms to be observed in this ordeal.

1a. There being general rules, as described in the introduction of the trial by ordeal, and there being peculiar rules for [the ordeal by] balance, from the invocation of *Dharma*, to the placing the written charge on the head inclusive, this is a peculiarity in the form of [ordeal by] fire.

2. "*Rubbed with rice*," means, he by whom both his hands have been rubbed or cleaned with rice.—Having made a stain with lac-dye, or other material, on the spots where there were moles, freckles, warts, scars, sores, &c., as *Nārada* has ordained:—"In all the hurts of the hand he should make vermilion marks."‡ Afterwards he should place seven *Ashwaththa* leaves in the palms of the open hands, from the text:—"Having filled the palm of the hand with seven equal *Ashwaththa* leaves."|| He should next tie them up together with the hands by as many threads as there are *Ashwaththa* leaves; that is to say, he should tie them with seven. These seven threads should be white, as appears from the text of *Nārada*:—"He should tie the hands with seven strings of light-coloured thread."§ He should then place seven *Sumee*¶

Explanation of the text.

Other ceremonies to be observed.

\* *Ficus religiosa*.

† *Yājñyavalkya*, cited in the *Diryatatwa* and *Vecramitrodaya*.

‡ *Diryatatwa* and *Vecramitrodaya*.

|| *Vecramitrodaya*.

§ *Diryatatwa* and *Vecramitrodaya*.

¶ *Mimos pudica*, a sort of sensitive plant.



leaves, and seven blades of *Doob* grass, with fried grain, and fried grain mixed with curds, on the top of the *Ashwaththa* leaves, from the text :—" He should place seven leaves of the *Pippala*\* tree, seven *Sumee* leaves and fried grain, seven blades of *Doob* grass, and fried grain mixed with curds."† He should also place flowers, as appears from the following text of *Pitamaha* :—" He should place in the hands seven leaves of the *Pippala* tree, fried grain, jasmine, and curds, and then tie them up with thread."‡ "*Jasmine*," a species of flower.

*Arca* leaves to be used only when the *Pippala* leaves are not procurable.

3. As for the text, " He is clear who is unburnt to the seventh circle holding red-hot iron in his hands wrapped up in seven leaves of the *Arca*|| plant."§ That must be understood as prescribing the use of *Arca* leaves, where *Ashwaththa* leaves cannot be had. The leaves of the *Ashwaththa* must be considered the principal, from their having been extolled in the following text of *Pitamaha* :—" Fire is produced from the *Pippala* tree. The *Pippala* is considered as the chief of trees. Therefore a wise man should place the leaves of it in the hands."¶

4. He next propounds the invocation to fire by the party undergoing (the ordeal) :—

Invocation to be used by the party undergoing the ordeal.

CIV. " Thou, O purifying fire, dwellest in the interior of all creatures. Thou, O fire, pronounce, like a witness, the truth of my innocence or guilt."\*\*

\* The holy fig-tree, or *ficus religiosa*.

† *Diryatatwa*.

‡ *Diryatatwa* and *Veeramitrodaga*.

|| *Asclepias gigantea*, or *Swallow wort*.

§ *Vyavahárumayúcha*.

¶ *Veeramitrodaga*.

\*\* *Diryatatwa* and *Veeramitrodaga*.

4a. Thou, O fire, dwellest in the interior—within the corporeal system of all creatures, whether viviparous, oviparous, engendered by heat and damp, or produced from the earth : thou art present by the preparation of food adapted to each. O purifier, or cause of purity : O fire, that provest the innocence of the distressed, speak like a witness the truth of my innocence or guilt. *Poonyupapabhiu* (innocence or guilt) is the fifth case, formed by rejecting the affix *lyup*. The meaning is : speak or declare the truth with reference to innocence and guilt.

5. The ball of iron being heated by three ignitions, and being brought before him by means of a pair of tongs, the party undergoing the ordeal, standing in the western circle with his face to the eastward, should invoke the fire with the *formula* : according to *Náveda* :—“ Having heated, with a three-fold ignition, a red-hot, shining, polished iron ball, he should speak, invoking truth.”\* Position of the accused.

6. The meaning is this. For the purpose of cleaning the iron, having cast the red-hot iron ball into water ; having again heated it and cast it into water, and having heated it by a third ignition, and it being extracted and placed before him, by means of a pair of tongs, the party about to perform (the ordeal) should utter the *formula* of, “ Thou, O fire, &c.” invoking truth—or calling on the name of truth. Explanation of the text.

7. The chief judge, having placed a common fire at the south side of the extremity of the circles, should perform the burnt offering with clarified butter, repeating the *formula* “ *Agnaye Pavacáya Swaha*,” one hundred and eight times, from the next :—“ For the purpose of pacifying it, he should Ceremonies to be performed by the chief judge.

make an offering to the fire, of clarified butter one hundred and eight times.”\*

Invocation to  
be used by the  
chief judge.

8. Having performed the burnt offering, and having thrown the ball of iron into that fire, and that being red-hot, and having performed the ceremonies already described, commencing with the invocation to *Dharma*, and ending with the burnt offering; at the third ignition, he should invoke the fire inherent in the iron ball with this *formula*:—  
“Thou, O fire, art the four *Vedas*, and thou officiatest at sacrifices. Thou art the mouth of the gods. Thou art the mouth of deified sages. Thou dwellest in the interior of all creatures, therefore knowest thou the good and bad. By reason that thou cleanseest from sin; therefore art thou called purifier. Show thyself, O purifier, flaming in case of guilt, but in case of innocence, O fire, become cold. Thou, O fire, pervadest the system of all creatures, like a witness. Thou only, O deity, knowest what mortals do not comprehend. This man is arraigned in a cause, and desires acquittal. Therefore thou art capable of delivering him lawfully from this perplexity.”†

9. Moreover:—

CV. “He should place in both hands of him who has spoken, an iron ball of fifty *palas*,‡ smooth and red-hot.”||

Dimensions and  
description of the  
red-hot ball with  
which the ordeal  
is to be performed.

9a. “Of him,” meaning the party who is to perform the ordeal; “who has spoken,” who has recited the *formula* of “Thou, O fire, &c.,” “iron,” a ball made of iron; “of fifty *palas*,” equal in weight to fifty *palas*; “smooth,” divested of

\* *Gyavahíramayuc'ha* and *Veeramitrodaya*.

† *Diryatatwa* and *Veeramitrodaya*.

‡ A weight of gold or silver equal to four *carshas*.

|| *Yājñavalkya*, cited in the *Diryatatwa*.

all excrescences, on all sides round and polished. It should be eight fingers\* in circumference, from the following text of *Pitamaha* :—" Having made a ball free from excrescences and smooth, eight fingers in circumference, and fifty *palas* in weight, he should heat it in the fire."† " *Red-hot*," like fire. The chief judge should place or deposit it [the hot ball] in both hands covered with *Ashwaththa* leaves, curds, *Doob* grass, and other materials.

10. He next propounds what he should then do :—

CVI. " He, taking it, should proceed exactly through seven circles slowly."‡

10a. That man, taking the red-hot iron ball in the palm of his hands, should proceed slowly through the seven circles. By the use of the term "exactly" (*eva*), he shows that the feet are to be placed within each circle, and that the circles are not to be stepped over, as *Pitamaha* has said :—" He should not overstep a circle, nor should he place his foot behind."||

The accused is to walk through seven circles,

11. He should proceed exactly through seven circles slowly. This has been said. He next declares what is the extent of each circle, and what is the extent of the intervening space between the circles :—

CVIa. " The circle must be held to consist of sixteen fingers and so much the last."§

Extent of the circles,

11a. That of which there are sixteen fingers is consisting

\* *Angoola*, a finger's breadth, a measure of eight barley corns.

† *Vyavahāramayuc'ha*, *Diryatatwa* and *Vceramitrodaya*.

‡ *Yājñavalkya*, cited in the *Diryatatwa*.

|| *Diryatatwa*.

§ *Yājñavalkya*, cited in the *Vceramitrodaya*.

of sixteen fingers. The circle must be considered as measuring sixteen fingers, and the last and middlemost of the circles exactly the same; that is, exactly sixteen fingers. By prescribing that he shall proceed through seven circles, it follows, that the first circle is the starting place, and that there are besides seven other circles of the extent specified. This has been declared by *Náreda* in his specification:—"They have declared thirty-two fingers between one circle and another. By the eight circles in this manner, there are two hundred fingers and forty fingers of land, over and above, in measurement,"\*

Explanation of  
the text.

12. The meaning of this is that, after the starting circle, which measures sixteen fingers, follows the first circle, which, together with the second and each succeeding one, measures, with the intervening space, thirty-two fingers. The starting circle alone measures sixteen fingers. The seven circles are to be walked over together with the intervening spaces consisting of thirty-two fingers. By the eight circles, in this manner, there are two hundred and forty fingers in measurement. The word *Angoolamanatah*, "fingers in measurement," is formed by affixing *tusih* to the crude noun.

Small circles are  
to be made within  
the larger ones,

13. In this process, however, having made a starting circle of sixteen fingers, and having divided into two parts, each of the other seven circles or portions of land, consisting, with their intervening spaces, of thirty-two fingers, passing over the seven portions of land, or circles consisting each of sixteen fingers which form the intervening space, seven circles proportioned to the size of the foot of the person about to walk, should be made in the remaining circles, which also consist each of sixteen fingers, as has been said by him

also :—\*“ He should make the measure of this circle equal to his foot.”\*

14. It has also been said by *Pitamaha* :—“ He should make eight circles, and after them a ninth. Then first to be called (the circle) of fire, the second of *Varuna*, the third of the wind, the fourth of the deity *Yama*, the fifth of the deity *Indra*, the sixth of *Cuvera*, the seventh of *Soma*, the eighth of *Suvita*, the ninth of all the gods. This the wise have determined. They have declared thirty-two fingers between one circle and another. By the eight circles, in this manner, there are two hundred fingers and fifty-six fingers of land in measurement. Another circle is to be made, equal in measurement to the foot of the person about to walk. In each of the circles *Cusa* grass must be placed, as prescribed by the *Shasters*.”† From these texts it follows, that, excluding the ninth circle, called the circle of all the gods, for which no particular measurement of fingers has been specified, by the eight circles and their intervening spaces, each consisting of sixteen fingers, two hundred and fifty-six fingers are taken up : still as there are only seven circles to be travelled over, in the first of which he stands, and in the ninth of which he drops (the hot iron), there is no discrepancy.

Enumeration of the circles, according to the text of *Pitamaha*.

15. The measurement of an *angoola* or finger's breadth is this : eight *yuvās*, or very small barley corns, make an *angoola* or finger. This is declared to be the measure of an *angoola* ; but twelve *angoolas* or fingers make one *vitesti* or span ; two *vitestis* or spans make one *husta* or cubit ; four cubits make one *danda* or staff ; two thousand of them make

Enumeration of the terms of measurement.

\* *Yājñavalkya*, cited in the *Vyavahāramayuc'ha*, *Divyatatwa* and *Veeramitrodaya*.—This is not a text.—(Editor.)

† *Vyavahāramayuc'ha*, *Divyatatwa* and *Veeramitrodaya*.

one *crośa*, and eight thousand of them make one *yojana*. This must be understood.

16. Having gone over the seven circles, what is to be done? In answer to this he says:—

CVII. “He obtains acquittal, if, having relinquished the fire, his hands being rubbed with rice, he is unburnt.”\*

If the hand is burnt, he is criminal.

16*a*. Standing in the eighth circle, and dropping the red-hot iron ball in the ninth circle, and rice being rubbed on both his hands, if his hands are unburnt, he obtains acquittal. But if his hands are burnt, he is criminal. This is the true meaning.

But not, if he is burnt elsewhere.

17. He who, trembling through fear, is burnt elsewhere than in his hands, is not on this account criminal, as *Catya-yana* has said:—“A person trembling under an accusation, if he is burnt elsewhere than in the proper place, the gods consider him as unburnt, and to him he should again cause (the ordeal) to be given.

CVII*a*. The ball falling in the intermediate space, or in a case of doubt, he should again take it.”†

18. When the ball of the person, in the act of walking, falls in the intermediate space, or short of the eighth circle, or where there is a doubt as to whether he is burnt or unburnt, he should then take it again.—Thus has the inferred meaning been declared.

Recapitulation of the ceremony.

19. And here the substance of the ceremony is recapitulated. Having performed the *Bhoota Shoodhee* on the day but one be-

\* *Divyatatwa*.

† *Yājñavalkya*, cited in the *Divyatatwa*.

fore : moving on the day before constructed the circles as prescribed by law : having worshipped the inferior deities presiding over the several circles respectively : having prepared the fire : having completed the *Shanti homa* or propitiatory sacrifice to it : having placed the iron ball in the fire : having gone through the invocation to *Dharma*, and the worship of all the deities ending with the burnt offering : having performed the ceremony of rubbing with rice the hands of the person undergoing the ordeal, he being fasting, having bathed, and standing in his wet clothes, in the westernmost circle, and the paper containing the articles of charge being tied with the proper *muntras* on his head; the chief judge, having invoked the fire at the ignition, and taking the red-hot iron ball with a pair of tongs, should place it, being worshipped by the person undergoing the ordeal, in the palm of his hands; and he having gone through the seven circles, and dropped it in the ninth, if unburnt is innocent.—This is the law relative to fire.

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#### SECTION IV.

##### *Of the Ordeal by Water.*

1. He now propounds the rule regarding the (ordeal by) water :—

CVIII. “ He (the accused) having used this invocation, ‘ Preserve me, O *Varuna*, by declaring the truth,’ should enter the water, holding the thigh of a person immersed up to his navel.”\*

Forms to be observed in this ordeal.

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\* *Yājñyavalkya*, cited in the *Diryatatwa*, *Vividatandava*; but *Vyasa*, in the *Vyavahīramayuc'ha*.



Explanation of  
the text.

2. "*Having used this invocation,*" or having invoked the water with this *formula*, "*O Varuna, by declaring truth, preserve me;*" the person who is about to undergo the ordeal, having grasped the thigh of a person immersed up to his navel, that is, of a person standing in water of sufficient depth to reach his navel, should enter or plunge into the water.

*Varuna* must be worshipped after the other prescribed ceremonies have been gone through.

3. This must be done after the worship of *Varuna*, as appears from the text :—"The purified (chief judge) first shall perform the worship of *Varuna* with perfumes, garlands, *Soorabhi* (a sweet smelling substance), honey, milk, clarified butter, &c."\* This must be done after the invocation of *Dharma* and the other deities, and after the worship and burnt offerings shall have been performed, and the written charge placed on the head with the prescribed *formula*; such being the general rule applicable to all ordeals.

Invocation to be  
used by the chief  
judge.

4. "Thou, O water, art the life of all creatures. Thou wast contrived at the beginning of the creation. Thou art celebrated as the purifier of all nature, animate and inanimate. Therefore do thou exhibit thy real essence for the discovery of good and evil."† After the chief judge shall have made the above invocation to the water, the person about to undergo the ordeal should thus invoke the water, "*Preserve me, O Varuna, by declaring the truth.*"‡

And by the ac-  
cused.

Enumeration of  
the different des-  
criptions of water  
fit for the ordeal.

5. By *Náreda* have been declared the places fit to be used for the ordeal by water :—" [The ordeal should be administered] in a river gently flowing [*Nadi*], the ocean [*Sagur*], a rivulet [*Faha*], a pond [*Hrada*], a mountainous

\* *Náreda*, cited in the *Divyatatwa*, *Vivádatandava* and *Vyavaháramayuc'há*.

† *Pitamaha*, cited in the *Divyatatwa* and *Vivádatandava*.

‡ Vide *Supra*, § 1.

cavity [*Devakhata*], a pool [*Tadaga*], and a lake [*Sara*].”\*  
*Pitamaha* also ordains :—“ He (the accused) should dive into still water, but neither too deep nor too shallow. It should be devoid of weeds and aquatic plants, and free from leeches and fish. He may administer the ordeal by means of that water which is contained in mountainous cavities. He should always avoid a reservoir and a rapidly flowing river. He must always have recourse to such water as is free from waves and mud.”†

6. The term “*reservoir*” means water which has been brought from a pool, lake, or elsewhere, and emptied into a copper or other cistern.

Meaning of the term reservoir.

7. The person standing in water up to his navel, holding a *Dharma sth'hoona* or sacred pillar, made of a tree suitable for sacrifice, should remain there, with his face to the east quarter; as appears from the text, “ Having held a sacred pillar, he should remain in the water with his face to the east quarter.”‡

The person who stands in the water, should hold a pillar.

8. What shall be done after this? It is replied :—

CIX. “ A swift runner shall then hasten to fetch an arrow discharged at the moment, and if, while the runner is absent, he appears immersed, he should obtain acquittal.”§

Mode of ascertaining innocence.

9. At the same time that the accused plunged into water, a strong person should discharge an arrow, and another swift runner proceeding to the spot where the arrow fell, having

Explanation.

\* *Dieyatatwa* and *Vivádatandava*.

† *Vivádatandava*.

‡ *Dieyatatwa*.

§ *Vyarahíramayuc'ha*.

brought the arrow so discharged, if he, upon his return, see the person under the water, then he is entitled to acquittal.

Another modo  
described.

10. It has been described also in the following manner. After three arrows shall have been discharged, a swift runner, having proceeded to the place where the second arrow has fallen, and having taken it up, should remain there, and another swift runner should remain at the place from whence the arrow was discharged under the *Torana* or signal post. After they have thus taken up a position, a third person should clap his hands, and the person who is about to undergo the ordeal should immediately dive under the water, at which instant the person standing under the signal post should run to the spot on which the second arrow fell, and, on his arrival, the person who took up the arrow, should hasten to the signal post, and if, on his return, he do not see the accused immersed under water, then he is condemned. This has been clearly declared by *Pitamaha*.

As declared by  
*Pitamaha*.

11. "The running and diving, of the runner and the person who is about to undergo the ordeal, should be simultaneous. A swift runner should proceed from the foot of the signal post to the target: afterwards the second one should quickly bring the arrow. He should go from the foot of the signal post, to the place where the first person went. If, on the return of him who took up the arrow, he do not see the accused out of the water, but entirely immersed under it, then his innocence must be admitted."\*

What consti-  
tutes a swift run-  
ner.

12. *Náreda* has defined what constitutes a swift runner; —"Among fifty runners two who can run most quickly, should be appointed to bring the arrow."†

\* *Diryatatwa*.

† *Diryatatwa* and *Vyavahāramayuc'ha*.

13. The signal post should be made to come up to the ear of the person who is about to undergo the ordeal, and fixed on an even ground in the vicinity of the place where he is about to undergo immersion. The text of *Náreda* declares :—“A signal post as high as the ear [of the accused] should be erected on level and purified ground, on the edge of the water in which he is to be immersed.”\*

Description of  
the signal post.

14. He [the chief judge] should first worship three arrows and a bow made of bamboo, with suspicious offerings, white flowers, &c., as *Pitamaha* has declared :—“He [the chief judge] having first worshipped the arrows and the bow made of bamboo, with suspicious offerings, incense and flowers, should afterwards proceed to perform the rite, [that is, to administer the ordeal].”†

Bow and arrows  
to be worshipped.

15. By *Náreda* have been declared the dimensions of the bow and [distance] of the target. “Seven hundred fingers [in length] is a *kroora d’hanú* or dreadful bow ; six hundred is a *madhyama* or moderate, and five hundred is a *munda* or inferior bow ; know this to be the rule of the bow.‡ A skilful archer having made a target one hundred and fifty cubits distant, should discharge three arrows from a moderate bow, but not from any other. The archer is blameable if the arrows go beyond or fall short of the target.”|| Or the term “seven hundred” may be construed seven fingers more than a hundred [as being the measure of] a *kroora d’hanú* or dreadful bow ; so the terms six hundred and five hundred [may be construed similarly.] Thus the measure of a *kroora d’hanú* or dreadful bow would be eleven fingers more than four cubits, of

Dimensions of  
the bow, and dis-  
tance of the tar-  
get.

\* *Diryatatwa*.

† *Vyavaháramayuc’ha*.

‡ *Diryatatwa*, *Vividatandava*, and *Vyavaháramayuc’ha*.

|| *Pitamaha*, cited in the *Diryatatwa* ; but *Náreda* in the *Vividatandava* and *Vyavaháramayuc’ha*.

the *madhyama* or moderate bow ten fingers more, and of the *munda* or inferior bow nine fingers more.

Arrows how to be made.

16. The arrows must be made of bamboo, but without an iron head, as appears from the text :—“ An arrow without an iron point should be made for the purpose of the trial, and formed from the branch of a bamboo without knots, and the archer should discharge it with all his might.”\*

Who should be the archer.

17. He should appoint as the archer, a person fasting, a *C'shetriya* or a *Brahmin* practised in the art, as appears from the text :—“ It is declared that a *C'shetriya* is to be the archer, or a *Brahmin* practised in that art; a mild, even-minded person, and one who has fasted shall discharge the arrow.”†

The arrow secondly discharged, should be brought from the spot on which it fell.

18. Of the three arrows discharged, the second one should be taken, conformably to the text :—“ The law has declared that, of the discharged arrows, the arrow secondly discharged is to be taken by a strong person.”‡ But it must be taken up from the spot on which it alighted, and not from the spot from which it glanced off. “ The (place of the) falling of the arrow is to be understood, and (that) of its glancing off is not to be attended to. The glancing is the tortuous bounding of the arrow from distance to distance.”||

Places and time improper for the discharge of arrows.

19. The arrows should not be discharged while the wind blows high, or on an uneven spot of ground, as appears from the text of *Pitamaha*. “ A wise man shall not discharge an arrow while the wind blows high, nor on uneven ground, and

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\* *Calyáyana*, cited in the *Divyatatwa*, *Vicádatandava*, and *T'yavahóra-mayuc'ha*.

† *Pitamaha*, cited in the *Divyatatwa*, and *T'yavaháramayuc'ha*.

‡ *Divyatatwa*.

|| *Ibid*.

places impeded by trees or posts, and covered with grass, shrubs, creepers, mud, or stones.”\*

20. The text before cited ; “ If while the runner is absent, he appears immersed, he should obtain acquittal,”† demonstrates the guilt of him who raises his body above the surface [before the arrow is brought back]. But *Pitamaha* has declared him guilty who moves from the spot : —“ Under no circumstances should his innocence be admitted, if even a part of his person be visible, or if he move to another place from that into which he first plunged.‡

If the person immersed move from the spot, he is considered guilty.

21. By the mention, “ *if even a part of his person be visible,*” the parts of his body from his ear downwards are intended, for there is particular mention [of that organ :] “ During the time of his being under water, should his head only be seen, but not his ear and nose, in this case his innocence must be admitted.”||

His ears must not be visible.

22. The following is a recapitulation of the rules for the present ordeal. Having fixed the signal post as before described in the vicinity of a piece of water of the description mentioned ; having made a target in a place at the distance specified ; having worshipped the bow with the arrows in the vicinity of the signal post ; having invoked *Varuna* to enter the water, and having worshipped him ; having completed the worship, ending with burnt offerings, of *Dharma* and the other deities ; and having bound the written charge on the head of the person who is about to undergo the ordeal, the chief judge should invoke the water with this *formula*,

Recapitulation of the rules.

\* *Diryatatwa*, and *Virādatandava*.

† Vide *Supra*, § 8.

‡ *Nāreda* and *Vrihaspati*, cited in the *Diryatatwa* ; but *Pitamaha* in the *Vyavahāramayukha*.

|| *Diryatatwa* ; but *Catygana*, cited in the *Virādatandava* and *Vyavahāramayukha*.

"Thou, O water, art the life of all creatures ;" after this the person who is about to undergo the ordeal, having invoked the water with this *formula*, " Preserve me, O *Varuna*, by declaring the truth," should approach the person standing up to his navel in water and leaning on a pillar ; and after three arrows have been discharged, a swift runner going to the spot where the second arrow has alighted, shall take it up, and another one having been stationed at the foot of the signal post, the chief judge should clap his hands thrice, at which instant the running and diving should be simultaneous, and then the fetching the arrow.

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### SECTION V.

#### *Of the Ordeal by Poison.*

1. He now propounds the rule of the ordeal by poison :—

Form to be observed in this ordeal.

CX. "Thou, O poison, art the son of *Brahma*, firm in the virtue of truth. Relieve me from this accusation, and by means of thy virtue become as nectar to me."\*

CXI. "Having recited this *formula*, [the accused] should swallow *Saranga* or *Hemasailaja* poison, and if the poison digest, without violent symptoms, it indicates his innocence."†

Explanation of the text.

2. The accused, having invoked the poison with this *formula*, (Thou, O poison, &c., § 1,) shall swallow the poison produced on the Himalaya mountains, or from the horn of an animal ; and if he can digest it, without manifesting any

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\* *Yājñavalkya*, cited in the *Vecramitrodaya* and *Divyatatwa*.

† *Ibid*.

violent symptoms from the poison, he is in that case absolved. By violent symptoms of poison is signified an entire change of the system from its natural state, as a text declares :—  
 “The entire change of the system from its natural state is a violent symptom of poison.”\*

3. The corporeal system is composed of seven elements, as skin, blood, flesh, serum, bone, marrow, and semen ; and the poisonous symptoms are also seven in number, the appearances of which are distinctly stated in the *Vishatantra* :—  
 “The first violent symptom of poison is horripilation ; the second is perspiration and dryness of the mouth ; the third and fourth cause the body to change its natural colour and trembling ; the fifth prostration of strength, faltering of the voice, and hiccups ; the sixth difficulty of respiration, and loss of reason ; and the seventh produces the death of the patient.”†

Description of  
poisonous symp-  
toms.

4. The worship of *Mahadeva* is in this case incumbent, as *Nārada* says :—“Having worshipped *Maheswara* with incense, complimentary gifts, and *muntras*, he should, while fasting, administer the poison in the presence of the gods and *Brahmins*.”‡

*Mahadeva* to be  
worshipped.

5. The chief judge who has fasted, having worshipped *Mahadeva*, should place the poison before him (*Mahadeva*) and having completed the worship ending with the invocation of *Dharma* and other deities, and burnt offerings, and having placed the written charge on the head of the person who is about to undergo the ordeal, he should invoke the poison thus :—“Thou, O poison, wert produced by *Brahma*, for the detection of the evil-minded. Display thy real qua-

Invocation to be  
used by the chief  
judge.

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\* *Vicramitrodaya*.

† *Vicramitrodaya* and *Diryatatwa*.

‡ *Vicradatandava* and *Diryatatwa*.



lity towards sinners, but be as ambrosia to the innocent, Thou, O poison, image of death, wert made by *Brahma*, relieve this man from sin and by means of thy virtue become as nectar to him.”\*

The poison how  
to be administered.

6. Having used this *formula*, the poison should be administered to him [the accused] in a sitting posture, and facing the north, as *Náreda* declares :—“ The chief judge, his mind being composed, should, while facing either the north or east quarter, in the presence of *Brahmins*, administer the poison to [the accused] facing the north.”†

What are pro-  
per poisons.

7. The *Batsanabha* and the like poisons are fit to be administered, as a text of *Pitamaha* declares :—“ *Sringi* or *Batsanabha* or *Himaja* poison [should be administered].”‡

And what im-  
proper.

8. The other sorts, which are not to be used, have also been propounded by him :—“ He should reject poisons which are factitious, decayed, and vegetable.”|| *Náreda* also says :—“ The *Bhrishku*, *Charita*, *Dhoopita*, *Misrita*, *Calcoota*, and *Alamboos* poisons, should be carefully avoided.”§

Proper time for  
administering it.

9. The time of administering the poison is propounded by *Náreda* :—“ Having weighed the poison, the quantity of it above indicated, must be administered at a cool season ; but one acquainted with the law should not administer it either in the afternoon, or in the twilights, or at noon.”¶

Quantity to be  
administered, va-

10. A quantity less than that above stated, should be administered at another time, as a text declares :—“ Four

\* *Pitamaha*, cited in the *Veeramitrodaya* and *Virádatanidava*.

† *Veeramitrodaya* and *Divyatatwa*.

‡ *Ibid*.

|| *Ibid*.

§ *Ibid*.

¶ *Veeramitrodaya*.

barleycorns of poison should be administered in the rainy season, five in the hot season, seven in the cold season, and less than that in the autumn.\* “*Less than that,*” means six (barleycorns).

ries according to the season.

11. By the mention of the cold season, the dewy season is included, owing to their being included in the same compound term in the *Sruti*.† The spring is the time for all ordeals generally; and therefore, at that time also, seven barleycorns of poison mixed with clarified butter should be administered; as a text of *Nīreda* declares :—“One-eighth minus an eighth of a twentieth of a sixth of a *pala* of the poison should be administered, mixed with clarified butter, to the person who is about to undergo the ordeal.”‡

Quantity to be administered in the proper season.

12. One *pala* is equal to four *suvernas*; one-sixth of a *pala* is ten *mashas* and ten barleycorns; three barleycorns make one *krishnala*; five *krishnalas* a *masha*; one *masha* is equal to fifteen barleycorns; ten *mashas* are equal to one hundred and fifty barleycorns, these with the addition of [ten barleycorns] are equal to one hundred and sixty barleycorns, which being one-sixth of a *pala*, one-twentieth of it [one-sixth of a *pala*] is eight barleycorns; one-eighth being subtracted from which makes one barleycorn less, which is equal to an eighth of a twentieth of a sixth of a *pala* [or seven barleycorns].—This quantity of poison should be administered, mixed with clarified butter; but the quantity of the clarified butter should be thirty times greater than the poison.

Measures by which the quantity is to be ascertained.

13. *Catyáyana* declares :—“In the morning and in a cool place, the poison being finely ground and mixed with clarified butter thirty times the quantity, should be given to all

Should be mixed with clarified butter.

\* *Vccramitrodaya* and *Diryatatwa*.

† *Diryatatwa*.

‡ *Vccramitrodaya*.

persons.”\* The meaning is, that the poison should be mixed with thirty times as much clarified butter.

Care should be taken against the admission of sorcery and antidotes.

14. The person about to undergo the ordeal must be guarded from sorcerers and such like persons. “The king should station his own people to guard the person who has undergone the ordeal, from the acts of sorcerers and the like, for the space of either three or five days and nights; and should examine whether he keeps any medicine, *formula*, drugs, or gem, which may serve as antidotes to the poison, concealed about his person.”† These are texts of *Pitamaha*.

Requisite qualities of the poison.

15. The poison must also be tried:—“Poisons such as are produced from the horns of animals or from the Himalaya mountains, of superior quality, having smell, colour, and moisture of a known quality, and not removable by charms.”‡

Time allowed for the poison to take effect.

16. After taking the poison a period of time should be observed, during which a man’s hands may be clapped together five hundred times, after which, a remedy must be applied, as *Nāreda* declares:—“If he (the patient) during the time equal to the clapping of hands five hundred times, undergo no change of appearance, he is then absolved, and remedies must be applied.”||

Period extended according to one authority.

17. *Pitamaha* extends the period to the end of the day, but this applies to a case where only a small quantity of poison is administered. “After taking the poison, if he be well, free from fainting and vomiting, and unchanged in appearance, then at the end of the day, his innocence must be admitted.”§

\* *Veeramitrodaya* and *Divyatatwa*.

† *Ibid*.

‡ *Nāreda*, cited in the *Veeramitrodaya* and *Divyatatwa*.

|| *Veeramitrodaya* and *Divyatatwa*.

§ *Veeramitrodaya*.

18. Here, the chief judge, having fasted ; having worshipped *Mahadeva* ; having placed the poison in his presence ; having adored *Dharma* and other deities ; having placed the written charge on the head of the person who is about to undergo the ordeal, and invoked the poison, shall administer it to him facing the south ; and the person who is about to undergo the ordeal, having invoked the poison, must take it. This is the order.—The above is the law of the ordeal by poison.

Recapitulation.

## SECTION VI.

*Of the Ordeal by Sacred Libation.*

1. He next propounds the ordeal by sacred libation :—

CXII. “Having adored the wrathful gods, he should take the water in which they have been bathed, and having invoked it, he should cause to drink three handfuls of the same water.”\*

Form to be observed in this ordeal.

2. “*Having adored*,” having worshipped with perfumes, flowers, and the like ; “*the wrathful gods*,” *Doorga, Aditya*, and other deities : having washed them, the water in which they have been bathed should be collected. After bringing [the water], the chief judge should thus address it, “Thou, O water, art the life of all mortals ;”† and should cause the person who is about to undergo the ordeal, to drink three handfuls of it ; he having placed the water in another vessel, and invoking it thus, “O *Varuna*, by means of thy truth, preserve me.”‡

Explanation of the text.

\* *Vājnyavalkya*, cited in the *Smṛitichandricā* and *Vedraamitrodaya* ; but *Vishnu* in the *Tirādātandava*.

† Vide *Supra*.

‡ Ibid.

Ceremonies prescribed for other ordeals, to be observed in this.

3. This is to be done after the ceremonies prescribed for all ordeals, such as the invocation of *Dharma* and other deities, worship, and burnt offerings, and the placing of the written charge on the head with the prescribed *formula*.

The worship of particular deities, prescribed for certain individuals.

4. Here, by *Pitamaha* and others, have been propounded the rules relative to the deities proper for bathing, the fit occasions, and the persons who are competent to perform the rites:—"He should cause him to drink the water of that deity to whom he may be particularly devoted, and in case the individual worships all the deities equally, he must drink the water in which *Surya* or the sun has been bathed. Thieves and persons who live by the profession of arms should be made to drink the water in which *Doorga* has been bathed, but in no case should a *Brahmin* be made to drink [the water] in which *B'hascara* or the sun has been bathed. The spear of *Doorga* and the disc (*Mandala*) of *Aditya* or the sun must be washed; so the weapons of the other deities."\*—This is the rule with respect to the deities.

Cases in which and persons by whom, this ordeal should be used.

5. "The sacred libation must always be given in a case of confidence, and in cases of suspicion in general, and also for the purpose of reconciliation in order to produce mental satisfaction. The sacred libation is ordained to be used in the morning, by a person fasting, having bathed, clothed in moist garments, by a religious person, and one not addicted to evil practices."† "*A religious person*" signifies, one who believes in the existence of the Supreme Being.

Persons to whom this ordeal should not be administered.

6. "No wise man should administer the sacred libation to a drunkard, or a fornicator, to one addicted to evil practices, to a fraudulent person, and one professing atheism. He should avoid giving the sacred libation to a heinous

\* *Smritichandricá, Vivádatandava, Veeramitrodaya and Divyatatwa.*

† Cited by *Ballambhatta*.

offender, to one irreligious, ungrateful, to one impotent, low-born, or atheistical, to one of whom the customary sacraments have been omitted, and who has not received investiture with the sacred thread, and to slaves.”\*

7. “*A heinous offender*,” [one who has committed] a crime of the first degree; “*irreligious*,” destitute of the religion of his class or order, and a heretic; “*low-born*,” born in the reverse order of the tribes; “*slaves*” includes fishermen or the like.—This is the rule relative to persons incompetent.

Explanation of the disqualifying terms.

8. And it must be understood by the text of *Nāreda*, that [the chief judge], having made a circle with cow-dung, and placed the person who is about to undergo the ordeal, facing the east, within that circle, should administer to him the sacred libation. His text is to the following effect:—“Having brought the accused, he should place him inside the circle, and administer to him three handfuls of water, facing the east.”†

Duty of the chief judge.

9. But [should it be objected], that admitting the establishment of guilt and innocence at the completion of the other ordeals, beginning with the balance and ending with the poison, such effect cannot result from the ordeal by sacred libation; it is replied:—

CXIII. “He is doubtless innocent to whom no terrible calamity, proceeding from the act of God or the king, happens within fourteen days.”‡

9a. He to whom, prior to the expiration of fourteen days, no calamity or terrible distress proceeding from the king or

The innocence of the accused is proved, if no cala-

\* *Nāreda*, cited in the *Divyatatwa*.

† *Nāreda*, cited in the *Virādatandava* and *Divyatatwa*.

‡ *Yājñavalkya*, cited in the *Virādatandava*.

mity befall him  
within fourteen  
days.

the act of God, that is, having superhuman origin, happens or befalls, and he to whom only a slight distress occurs, should be considered as innocent; for cases of slight distress are incident to all mortals.

Calamity hap-  
pening after that  
period is no evi-  
dence of guilt.

10. Guilt is not imputable if the calamity occur after the prescribed period, as *Nárcda* says:—"One to whom any great deterioration happens at the end of two weeks, the wise should not consider as convicted; owing to the expiration of the prescribed period."\*

In trifling cases  
the period allow-  
ed is less.

11. The text "*within fourteen days*," applies to weighty charges, as has been specifically declared in the text:—"These must be administered in cases of weighty charges."† Other periods are propounded by *Pitamaha* in trifling cases:—"In a trifling case, the sacred libation is to be administered." The periods are these:—"Of whomsoever any deterioration appears, during either three or seven nights, or twelve days or two weeks, he must be held to be a criminal."‡

And varies as  
the charge is more  
or less trifling.

12. The subject matter which does not constitute a heavy charge, may be divided into three kinds, and the rule regarding the three periods, [namely, three nights, seven nights, and twelve days,] may be applied to each kind of case severally:—Thus (has been declared) the law of the ordeal by sacred libation.

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\* *Vivádatandava*, *Veeramitrodaya* and *Divyatatwa*.

† *Divyatatwa*.

‡ *Smṛitichandricá*, *Vivádatandava* and *Veeramitrodaya*; but *Yājñyavalkya*, cited in the *Divyatatwa*.

## SECTION VII.

*Of the Ordeal by Grains of Rice.*

1. *Jogeswara* has propounded the five great ordeals, from the balance to the sacred libation inclusive, as indicated ; but other ordeals in trifling charges have been declared in other *Smritis* ; *Pitamaha* has declared :—" I will propound the mode of using the ordeal by husked rice as ordained. In the case of theft the [ordeal of] husked rice is to be administered, and not in other cases ; this is certain. 2. He should cause white rice to be used, and of the *Shalee*\* description, but not of any other kind. A purified person having mixed the same with water, in which [an image of the sun] has been bathed, in an earthen vessel exposed to the rays of the sun, should leave it, on the same spot all the night. He [the chief judge] must cause the person, standing with his face to the east, having fasted and bathed, and taken the written charge on his head, to chew the rice and to spit it out on a leaf. The leaf must be of the fig-tree,† and not of any other ; but if none be procurable, of the *Bhoorjapatra*.‡ 3. If the chewed rice be tinged with blood, and the jaws and palate [of the accused] become dry, and his body tremble, consider him guilty."|| Let the chief judge, having caused the person who has taken the written charge on his head, to chew the rice and to spit it out. Having caused to chew [*bhukéshyitwa*] is the active participle formed by the causal affix *niehi*. In this instance,

Should be administered in cases of theft.

Ceremonies to be observed on the occasion.

Proof of guilt.

\* *Shalee*.—Rice in general, but especially in two classes, one like white rice growing in deep water, and the other a red sort requiring only a moist soil.—Wilson's Dict.

† *Pippala*, *Ficus religiosa*.

‡ The *Bhoj* or *Bhojputr*, a tree growing in the snowy mountains, and called by travellers a kind of birch.—Wilson's Dict.

|| *Smrutichandricá*, *Vicádatandara*, *Vççamitrodaya* and *Dityatitwa*.



All the ceremonies prescribed for other ordeals to be observed in this.

the invocation of *Dharma* and the ceremonies are to be observed, in the manner already prescribed; such being the general rule applicable to all ordeals.

### SECTION VIII.

#### *Of the Ordeal by Hot Metal.*

Form to be observed in this ordeal.

1. The ordeal by hot metal has been propounded by *Pitamaha*. "A round cup of either gold, silver, copper, or earth, is to be made, sixteen fingers [in circumference] and four in depth."\* The term "round cup" (*mandala*) here means a circular pan. "It is to be filled up with twenty *palas* of clarified butter and oil; and one *masha* of gold is to be thrown in when it is heated sufficiently; and he [the accused] should take out the gold by the thumb and forefinger joined. He whose hand trembles not, and does not become blistered, and whose fingers sustain no detriment, becomes absolved by means of his virtue."†

Proof of innocence.

Explanation.

2. In the text, the term "should take out" means, should lift out of the vessel only, and it is not necessary to be thrown over the side.

Another mode of performing this ordeal.

3. Another mode is :—"Having put clarified butter, made of cow's milk, into a vessel formed either of gold, silver, copper, iron, or earth, a purified person should heat it in the fire. A piece of metal, either gold, silver, copper, or iron, properly cleaned and washed once with it, is to be thrown in it [the clarified butter], boiling with effervescence, and not admitting the touch of the nail. It [the clarified

\* The text is read otherwise by the authors of the *Smritichandricā*, *Vivāda-tandava*, *Veeramitrodaya*, and *Diryatatwa*.

† Ibid.

butter] should be examined by throwing into it the leaf of the *Arca*\* tree, being purified as for sacrifice, and having a hissing sound; afterwards he should once consecrate it with this *Muntra* or *formula*:—‘Thou, O clarified butter, art most pure for sacrificial observances. Thou, O fire, certainly burnest sinners, and waxest cold in favour of the innocent.’ He should cause him [the accused], having come fasting, bathed, and with moist clothes, to take out the metal, which was left in the clarified butter. The examiners should inspect his fore-finger; and if there be no blisters on it, he is innocent, but if otherwise, guilty.”†

4. Here also the rule regarding the invocation of *Dharma*, and the like ceremonies, must be attended to. The above incantation to the clarified butter is to be used by the chief judge.

All the ceremonies used in other ordeals to be observed in this.

5. “Thou, O purifying fire, dwellest in the interior of all creatures.”‡ This *formula* is to be used by the person about to undergo the ordeal.

*Formula* to be used by the party.

6. From the text “should inspect the fore-finger” it follows, that it is that finger by which the metal should be taken out.—Thus has been succinctly propounded the ordeal by hot metal.

Explanation of a former text.

## SECTION IX.

### *Of the Ordeal by Dharma and Adharma.*

1. By *Pitamaha* has been declared the rule regarding the ordeal named *Dharma* and *Adharma*:||—“I will now clearly propound the trial by *Dharma* and *Adharma*, [which is in-

This ordeal applicable to what cases.

\* *Arca* is commonly called *Acanda*: *Calotropis gigantea*.

† *Smritichandricā*, *Vecramitrodāya*, and *Dicyatātwa*.

‡ Vide *Supra*.

|| These terms may be translated the genius of justice and of injustice.

tended for] murderers, civil suitors, and persons subject to the performance of penance.”\*

Explanation of the text.

2. “*Murderers*,” in cases involving life ; “*civil suitors*,” in cases involving property ; “*persons subject to the performance of penance*,” in cases involving moral sin.

Form to be observed in this ordeal.

3. “An image of *Dharma* is to be made with silver, and another of *Adharma* with lead or iron.”† The meaning is, that this image may be made either of lead or iron.

Another mode of performing this ordeal.

4. He declares another mode :—“ Or he may draw white and black figures of *Dharma* and *Adharma*, either on a leaf of the *Bhoj* tree, or on canvas, cloth, &c. He should sprinkle the *panchagarya*‡ on them, and should make offerings of perfumes and garlands. *Dharma* will hold a white flower in his hand, and *Adharma* a black one. Having made two pictures as above described, he should enclose them in two round balls. Two balls equal in size are to be made either with cow-dung or earth, and placed unobserved in a fresh earthen vessel. Having placed the vessel on a spot cleaned and rubbed with cow-dung, and in the presence of the gods and *Brahmins* ; he should invoke the gods and regents of the world in the manner above prescribed.”||

Formula to be recited by the accused.

5. He should draw out the written charge after the invocation of *Dharma* : then the accused should recite this formula :—“ If I am free from guilt, may *Dharma* come into my hand ; if I am guilty, then by means of its virtue, may sin§ come into my hand.”¶

\* *Smritichandricá*, *Veeramitrodaya*, and *Divyatatwa*.

† *Pitamaha*, cited in the *Smritichandricá*, *Veeramitrodaya* and *Divyatatwa*.

‡ This is used for purification, and made with sugar, clarified butter, honey, cow-dung, and cow-urine.

|| *Pitamaha*, cited in the *Smritichandricá*, *Veeramitrodaya*, and *Divyatatwa*.

§ *Sin* here means the image of *Adharma*.

¶ *Pitamaha*, cited in the *Smritichandricá*, *Veeramitrodaya*, and *Divyatatwa*.

6. "The accused without delay shall then take out one of the images; he is acquitted if he bring out the image of *Dharma*: but condemned if he draw forth that of *Adharma*."\*  
—Thus has been succinctly declared the trial by *Dharma* and *Adharma*.

Proof of guilt  
or innocence.

## SECTION X.

### *Of other Tests.*

1. Moreover, other tests with reference to the importance and lightness of the subject matter, as well as to the distinction of the tribes, have been declared by *Menu* and others. Those are:—"The oath should be taken, by truth in the case of one *Niska*: by touching the feet [of a superior] in that of two *Niskas*, and by [the forfeiture of the fruit of] virtuous acts in the case of three, and by the sacred libation in cases exceeding that amount."† "Let the judge cause a priest to swear by his veracity; a soldier, by his horse or elephant, and his weapons; a merchant by his kine, grain, and gold; a mechanic or servile man, *by imprecating on his own head, if he speak falsely*, all possible crimes."‡

Enumeration of  
other tests for the  
ascertainment of  
guilt or innocence.

2. The mode of ascertaining innocence is propounded by *Menu*:—"One who meets with no speedy misfortune, must be held veracious in his testimony on oath."|| The calamity is thus described. "Of whom no dreadful calamity befalls from God or the king."§

Mode of ascer-  
taining innocence.

3. The extent of the period [allowed for the appearance of the calamity], varies from the first night of the third, from

Time to be al-  
lowed.

\* *Pitamaha*, cited in the *Smritichandricā*, *Veeramitrodaya*, and *Divyatatwa*.

† *Vivadatandava*.

‡ *Menu*, 8, § 113, cited in the *Vivadatandava*, *Veeramitrodaya*, *Divyatatwa*.

|| *Vivadatandava*, *Veeramitrodaya*, *Menu*, 8, § 115.

§ Vide *Supra*.

the third night to the fifth, and so forth, and should be fixed with reference to the serious or trifling nature of the charge.

Losing party to be subjected to fine and penalty.

4. The result, whether successful or otherwise, of these ordeals, being determined, a distinction as to the punishment is shown by *Catyáyana* :—" He should cause to be paid [by the losing] to the successful party half of an hundred, and the condemned is subject to a penalty."\*

Amount of fine.

5. The penalty is thus propounded :—" The penalty in the ordeal by poison, water, fire, balance, sacred libation, rice, hot metal, should be awarded consecutively ; thus one thousand, six hundred, five hundred, four, three, two, and one hundred, and in inferior ordeals he should attach an inferior [penalty.]"†

Is to be super-added to the penalty formerly denounced.

6. This peculiar penalty for cases of ordeal is to be super-added to the penalty before denounced by the text, (" In the case of a denial, when the claimant proves his allegation, the defendant being cast, is to pay the amount, and an equal fine to the king.")‡

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\* *Vivádatandava*.

† *Catyáyana*, cited in the *Vivádatandava*.

‡ Vide *Supra*, Chap. ii. Sect. 3 ; § 1.

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## PART II.

### THE LAW OF INHERITANCE.



# THE LAW OF INHERITANCE,

FROM THE

## MITÁCŠHARĀ.

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### CHAPTER I.

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#### SECTION I.

*Definition of Inheritance ; and of Partition.—Disquisition on Property.*

1. EVIDENCE, human and divine, has been thus explained with [its various] distinctions ; the partition of heritage is now propounded by the image of holiness.

1. Subject proposed.

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#### ANNOTATIONS.

1. *Evidence, human and divine.*] Intending to expound with great care the chapter on inheritance, the author shows by this verse the connexion of the first and second volumes of the book.—*Subódhini*.

*The image of holiness.*] *Yājñyavalkya*, bearing the title of contemplative saint (*Yógiswara*,) and here termed the image of holiness (*Yógamurti*.)—*Bālabhāṭṭa*,



2. Inheritance defined.

2. Here the term heritage (*dāya*) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

3. It is lineal or collateral.

3. It is of two sorts: unobstructed (*apratiband'ha*), or liable to obstruction (*sapratiband'ha*.) The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue: and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants.]

#### ANNOTATIONS.

2. *Solely by reason of relation.*] "Solely" excludes any other cause, such as purchase or the like. "Relation," or the relative condition of parent and offspring and so forth, must be understood of that other person, a son or kinsman, with reference to the owner of the wealth.—*Bālam-bhatta*.

The meaning is this. Wealth, which becomes the property of another, (as a son or other person bearing relation,) in right of the relation of offspring and parent or the like, which he bears to his father or other relative who is owner of that wealth, is signified by the term heritage.—*Subōd'hini*.

3. *In right of their being his sons or grandsons.*] A son and a grandson have property in the wealth of a father and of a paternal grandfather, without supposition of any other cause but themselves. Theirs consequently is inheritance not subject to obstruction.—*Subōd'hini*.

*Property devolves on parents &c.*] *Viśveśwara-bhatta* reads "parents, brothers and the rest" (*pitrī-bhrātrādīnām*) and expounds it 'both parents, as well as brothers and so forth,' *Bālam-bhatta* writes and interprets 'an uncle and a brother or the like,' (*pitrīvyā-bhrātrādīnām*;) but notices the other reading. Both are countenanced by different copies of the text.

4. Partition (*viḥhāga*) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

4. Partition defined.

5. Entertaining the same opinion, *Nāreda* says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage."\* "Paternal" here implies any relation, which is a cause of property. "By sons" indicates propinquity in general.

5. *Nāreda* describes this head of actions.

### ANNOTATIONS.

*The same holds good in respect of their sons &c.*] Here the sons or other descendants of the son and grandson are intended. The meaning is this: if relatives of the owner be forthcoming, the succession of one, whose relation to the owner was immediate, is inheritance not liable to obstruction: but the succession of one, whose relation to the owner was mediate or remote, is inheritance subject to obstruction, if immediate relatives exist.—*Subōd'hini*.

*In respect of their sons &c.*] Meaning sons and other descendants of sons and grandsons, as well as of uncles and the rest. If relatives of the owner be forthcoming, the succession of one, whose relation was immediate, comes under the first sort; or mediate, under the second.—*Bālam-bhatta*.

4. *Partition is the adjustment of divers rights.*] The adjustment, or special allotment severally, of two or more rights, vested in sons or others, relative to the whole undivided estate, by referring or applying those rights to parcels or particular portions of the aggregate, is what the word 'partition' signifies.—*Subōd'hini* and *Bālam-bhatta*.

5. "When a division of the paternal estate," &c.] Considerable variations occur in this text as cited by different authors. It is here read *paitrasya*; and *Bālam-bhatta* states the etymology of *paitra* signifying 'of or belonging to a father.' He censures the reading in the *Calpataru*, *pitryasya*, as ungrammatical. It is read in the *Mudana-ratna* *pitradēh* 'of a father &c.' Other variations occur upon other terms of the text: which is here read *tanayaik* for *putraik*; *calpyatē* for *pracalpyatē*; and *vyavahara-padam* for *tad-vivāda-padam*. The last is noticed by the commentator *Bālam-bhatta*. A disagreement also occurs respecting the pronoun *yatra*, for which some substitute *yas tu*, and others *yat tu*.—See *Jimlto-vāhana*, C. 1. § 2.

*Paternal here implies &c.*] The meaning, here expressed, is that the word

6. Topics included in it.

6. The points to be explained under this [head of inheritance,\*] are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

What is property?

7. Does it arise from partition, or pre-exist? and is it inferred from spiritual or temporal proof?

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion,†] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

### ANNOTATIONS.

“paternal,” as it stands in *Nāreḍa*’s text, intends what has been termed [by the author, in his definition of heritage,] ‘relation to the owner, a reason of property.’—*Subōd’hini*.

It intends any relation to the owner, as before mentioned, which becomes a cause of property: and it consequently includes the paternal grandfather and other [predecessors.] The author accordingly observes, ‘that “by sons” indicates propinquity in general;’ meaning any immediate relative.—*Bālam-bhatta*.

7. *Does property arise from partition.*] Here the enquiry is twofold: for the substance, which is to be divided, is the subject of disquisition; and the doubt is, whether partition be of property, or of what is not property. For the sake of this, another question is considered: Is partition the cause of property, or not? If it be not the cause of property, but birth alone be so; then, since property is by birth, it follows that partition is of property. This is one disquisition, which the author proposes by the question “does property arise from partition &c.” Another inquiry relates to the subject of property. The author introduces it, saying “proprietary right is explained.” Here the right of property is the subject of discussion: and the doubt is whether it result from the holy institutes only, or be demonstrable by order and temporal proof. That question the author proposes.—*Subōd’hini*.

The substance, which is to be divided, is the subject of the first disquisition. Here the question is, whether partition of what is not property, be the cause

\* *Bālam-bhatta*.

† *Bālam-bhatta*.

8. [It is alleged, that] the inferring of property from the sacred code alone is right, on account of the text of *Gautama*; "An owner is by inheritance, purchase, partition, seizure,\* or finding.† Acceptance is for a *Brahmana* an additional mode; conquest for a *Cshatriya*; gain for a *Faisya* or *Sudra*."‡ For, if property were deducible from other proof, this text would not be pertinent. So the precept, ("A *Brahmana*, who seeks to obtain any thing, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief;"||) which directs the punishment of such as obtain valuables, by officiat-

8 Property supposed to be spiritual.

### ANNOTATIONS.

of proprietary right: and thus right, arising from partition, would not be antecedent to it, since partition, which becomes the cause of that right, had not yet taken place. Or is partition not the reason of property, but birth alone? and thus, since proprietary right thence arose, partition would be of property. This is one disquisition, which the author proposes: "Does property arise &c." He introduces a second question, which serves towards the solution of the first. —*Balam-bhatta*.

8. *It is alleged that the inferring of property from the sacred code alone is right.*] The author here states the opponent's argument.—*Subód'hini*.

*On account of the text of Gautama.*] If property were deducible from other, that is from temporal, proof, this passage of *Gautama's* institutes would not be pertinent, since it would be useless if it were a mere repetition of what was otherwise known.—*Balam-bhatta*.

*For it would belong &c.*] The thing would belong to the taker; since that relation would be alone the subject of perception.—*Balam-bhatta*.

*Therefore property is a result of holy institutes exclusively.*] If property be worldly, it would follow, that, when the goods of one man have been seized by another, should the person, who has been despoiled, affirm concerning them, "my property has been taken away by this man," a doubt would not, upon hearing that, arise in the minds of the judges, whether it be the property of one, or of the other. As no doubt exists regarding the species, whether gold or something else, when gold, silver, or any other worldly object, is inspected;

\* Apprehensio, vel occupatio.

† Inventio.

‡ *Gautama*, 10. 39,—42. Vide infra. § 13.

|| *Menu*, 8. 340.

ing at religious rites, or by other similar means, from a wrong-doer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were property a worldly matter, one could not say "My property has been wrongfully taken by him;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

9. But it is temporal.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do: but the consecrated fire and

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#### ANNOTATIONS.

so none would exist in regard to property, for [according to the supposition] it is a worldly matter. But doubt does arise. Therefore it cannot be affirmed, that the usurper has no property. Or [the meaning may be this] the opponent, who contends that it is not the property of the captor, because that, which has been seized by him, is another's property, must be asked, Is there or is there not, proof, that property is not vested in the captor? [The opponent] impeaches the first part of the alternative: "then no doubt could exist &c." The notion is this; As no doubt arises concerning the species, when there is demonstration that it is gold or silver; so likewise, in the proposed case, no doubt could arise. Nor is the second part of the alternative admissible: for, if no evidence arise, it could not be affirmed, that the captor has not property. Omitting, however, this part of the reasoning, the author closes the adversary's argument, concluding that property is deduced solely from the sacred code.—*Subbādhini* and *Bālam-bhatta*.

9. *Property is temporal only.*] The author proves his proposition, that property is secular, by logical deduction. Property is worldly for it effects transactions relative to worldly purposes. Whatever does effect temporal ends, is temporal: as rice and other similar substances. Such too is property. Therefore, it is temporal. But whatever is not worldly, promotes not secular purposes: as a consecrated fire and other spiritual matters.—*Subbādhini*.

the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food, and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food; but as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are remarked among them.

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of

10. This doctrine is confirmed by the *Mīmāṃsā*.

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### ANNOTATIONS.

*For it is not as such that the consecrated flame &c.*] A hallowed fire has two characters: the spiritual one of consecration; and the worldly one of combustion. It effects the boiling of food in its worldly capacity as fire; not in its spiritual one as consecrated. For, if it did so in its last mentioned capacity, a secular fire, wanting the spiritual character of consecration, would not effect the boiling of food. Therefore the objection does not hold. Then, in the proposed case, gold or other valuable would effect the secular purpose of sale and purchase, in its character of gold or the like, not in that of property. The author replies to that objection: "It is not through its visible form &c." Besides, the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown: and, since that cannot be otherwise accounted for, there is evidence of property being secular.—*Subōd'hini*.

10. *The lipsā sūtra.*] The *sūtra*, or aphorism, here quoted, is on the desire of acquisition (*lipsā*), and is the second topic (*ad'hicarana*) in the first section (*pāda*) of the fourth book (*ad'hyāya*) of aphorisms by *Jaimini*, entitled *Mīmāṃsā*.—*Subōd'hini* and *Bālam-bhatta*.

*In the third clause of the lipsā sūtra.*] In the first clause (*varnaca*), the distinction between religious and personal purposes is examined. In the

Statement of  
the opponent's  
opinion.

popular recognition. In the third clause of the *Lipsá sūtra*,\* the venerable author has stated the adverse opinion, after [obviating] an objection to it, that, 'if restrictions, relative to the acquisition of goods, regard the religious ceremony, 'there could be no property, since proprietary right is not 'temporal;' [by showing, that] 'the efficacy of acceptance

### ANNOTATIONS.

second, the inquiry is whether the milking of kine and similar preparatives be relative to the person or to the act of religion. In the third, the question examined is whether restrictions, noticed in primeval revelation, as to the means of acquisition, (such as these, 'let a *Brahmana* acquire wealth by acceptance or the like, a *Cshatriya* by victory and so forth, and a *Vaisya* by agriculture &c.) must be taken as relative to the person or to the religious ceremony [performed by him].—*Subód'hini* and *Bálam-bhatta*.

The position of the adversary is, that, injunctions regarding the means of acquisition concern the religious ceremony, through the medium of the goods used by the agent; for, unless that be admitted, the precept would be nugatory, because there would be no one whom it affected.—*Subód'hini*.

The meaning is this: As in the case of an acquisition of goods under a precept relative to sacrifice, such as this "purchase the moon plant,"† the injunction regarding the acquisition of goods concerns the religious ceremony: so does the injunction respecting acceptance and other means of acquisition.—*Bálam-bhatta*.

The author states an objection to this position of the adversary. The objection is this: the question, considered in the third clause of the *Lipsá-sūtra*, is whether injunctions regarding acquisition of goods concern the religious ceremony or the person. The opponent's position is, that they concern the ceremony. That is not congruous. For, if the injunctions, regarding acquisition of goods, concern the religious ceremony, no property would arise; since property, being spiritual, would have no worldly cause to produce it; and no other means are shown in scripture; and the injunctions regarding acquisition, being relative to the ceremony, are not relative to any thing else: thus, for want of property, the religious rites would not be complete with that which was not property; and consequently the position, that injunctions, regarding acquisition of goods, concern the act of religion, is incongruous.—*Subód'hini*.

\* *Mimāṃsā*, 4. 1. 2. 3.

† *Soma*, *Asclepias acida*. *Roxb.*

‘and other modes of acquisition in constituting proprietary right, is matter of popular recognition.’ Does it not follow, ‘if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice?’ [Answer] ‘It is a blunder of any one who affirms, that acquisition does not produce a proprietary right; since this is a contradiction in terms.’ Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner, ‘Therefore a breach of the restric-

Objection.

Answer.

The right doctrine asserted.

### ANNOTATIONS.

He revives the position by answering that objection ; and the notion is this : the injunctions, regarding acceptance and the like, accomplish property ; and they will become relative to the religious ceremony through the medium of goods adapted to the performance of the ceremony : as the husking of grain, which effects the removal of the chaff, concerns the religious ceremony through the medium of clean rice which is adapted to the ceremony. But the wise consider property as a worldly matter [resulting from birth,] like the relation of a son to his father. Consequently there is no failure in the completion of religious rites [as supposed in the objection.]

Admitting, that, because injunctions regarding acquisition concern the religious ceremony, the acquisition likewise must relate to the ceremony ; does it not follow, since it relates not to any thing else, that there is no such thing as property ? and would not a failure of the religious ceremony ensue ? [Wherefore the adversary's position is erroneous.] The author states the objection and confutes it with derision. ‘Some one has blundered, affirming that acquisition does not produce property, for it is a contradiction in terms.’ Such is the construction of the sentence ; and the meaning is this : Acquisition, which is an accident of the acquirer, is a relation between two objects [the owner and his own] like that of mother and son. Consequently, there can be no acquisition without a thing to be acquired ; and it is a contradiction in terms to say ‘acquisition does not produce a proprietary right,’ as it is to affirm ‘my mother is a barren woman.’—*Subôd'hini* and *Bâlam bhalla*.

The demonstrated conclusion is, that, since valuables, being intended for every purpose, must be relative to the person, restriction, regarding the acquisition of them, must concern the person also.—*Bâlam-bhalla*.



Purpose of the  
disquisition ex-  
plained.

‘tion affects the person, not the religious ceremony?’ and the meaning of this passage is thus expounded,\* ‘If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and not so, if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the man, if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction, regarding acquisitions, affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence on the part of a man, because he has violated an obligatory rule.’ It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

Deduction,

#### ANNOTATIONS.

The purpose of the disquisition under this topic of inquiry it stated. It is interpreted by the venerable author (*Prabhācara-guru.*) The implied sense is this. According to the adversary’s position, there is no offence affecting the person, in violating the injunction. But the religious ceremony is not duly accomplished with goods acquired by a breach of the injunction. It is the religious ceremony, therefore, which is affected. But, according to the demonstrated doctrine, since the restrictions concern the person, the offence is his if he infringe the rule; and the religious ceremony is not affected.—*Subód’hini.*

The author, by way of closing the argument, states the result as applicable to the subject proposed. It is acknowledged by the maintainer of the right doctrine, that even what is gained by infringing the rule, much more what is acquired by other means, is property.—*Rālam bhatta.*

Otherwise, that is, if a right of property in wealth acquired even by infringing the rule, be not admitted; then, since no property is temporal because the restrictions concern the religious ceremony [and that, which is thus acquired, does so likewise,] therefore the means of living would be unattainable, since no

\* By the commentator on the *Mīmāṃsā*; *Prabhācara* surnamed *Guru.*

11. It should not be alleged, that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognised by the world ; and it disagrees with received practice.

11. An objection, obviated.

12. Thus, since property, obtained by acceptance or any other [sufficient] means, is established to be temporal ; the acceptance of alms, as well as other [prescribed] modes for a *Brahmana*, conquest and similar means for a *Cshatriya*, husbandry and the like for a *Vaisya*, and service and the rest for a *Sudra*, are propounded as restrictions intended for spiritual purposes ; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."\*

12. Certain means of acquisition are restricted to particular tribes, for spiritual reasons.

Other means are common to all.

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intends heritage subject to obstruction. "Occupation" or seizure is

13. *Gautama's* enumeration of the modes of acquisition expounded.

### ANNOTATIONS.

temporal property could exist ; and consequently there could be no religious ceremony, for there would be nobody to perform it.—*Subód'hini* and *Bálam-bhatta*.

11. *It should not be alleged, that even what is obtained by robbery.*] If property be acknowledged in that which is acquired by infringing the restriction, might it not be supposed, that even what is obtained by robbery and other nefarious means, becomes property ? The author obviates that objection. It does not become so. He removes the inconsequence of the reason. For the employment of it as such in sale and other transactions is not familiarly seen in practice.—*Bálam-bhatta*.

12. *Thus since property obtained by acceptance &c.*] Property being thus proved to be temporal, the author successively refutes the several arguments before cited in support of the notion, that it is not temporal.—*Bálam-bhatta*.

*Common to all.*] Including even the mixed classes.—*Bálam-bhatta*.

13. *If these reasons exist, the person is owner.*] If such reasons are known [to exist,] the owner is known.—*Subód'hini* and *Bálam-bhatta*.

\* *Gautama*, 10. 39. already cited in § 8.

the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner \*]. "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. 'For a *Brahmana*, that, which is obtained by acceptance or the like, is additional;' not common [to all the tribes]. "Additional" is understood in the subsequent sentence: 'for a *Cshatriya*, what is obtained 'by victory, or by amercement or the like, is peculiar.' In the next sentence, "additional" is again understood: 'what 'is gained or earned by agriculture, keeping of cattle, ' [traffic,] and so forth, is for a *Vaisya* peculiar; and so is, for 'a *Sudra*, that which is earned in the form of wages, by 'obedience to the regenerate and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of the *Súlas*,† and so forth,) is indicated by the word "earned" (*nirvishta*): for all such acquisitions assume the form of wages or hire; and the noun (*nirvésa*) is exhibited in the *tricāndi*‡ as signifying wages.

14. Another objection obviated.

14. — As for the precept respecting the succession of the

#### ANNOTATIONS.

Both commentaries read *jnyátéshu jnyátaté svāmi*, 'Such reasons existing, an owner exists.' But copies of the text exhibit *jātéshu jāyaté svāmi*, 'Such reasons being known, the owner is known.'

*Additional.*] The meaning of the term is 'excellent.'—*Bālam-bhatta*.

14. *As for the precept respecting the succession.*] The author obviates an

\* *Bālam-bhatta*.

† According to a text of *Usanas*, from which these words are taken.

‡ The dictionary of *Amera Singha* in three books (*Cāndas*.) The passage here cited occurs in the 3d book of the *Amera Cosha*. Ch. 4. v. 217.

widow and the daughters &c.\* the declaration [of the order of succession,] even in that text is intended to prevent mistake, (although the right of property be a matter familiar to the world,) where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the remark, that, if property were temporal, it could not be said "my property has been taken away by him;"† that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

15. The argument related, on which the first supposition was grounded.

16. The purpose of the preceding disquisition is this. A text expresses "When *Brahmanas* have acquired wealth by

16. Purpose of the disquisition explained.

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objection, that, if property be a worldly matter, the import of the text here cited is inconsistent, as it provides by precept, that the widow and certain other persons shall inherit on the owner's demise.—*Subód'hini* and *Bilambhatta*.

*The declaration of the order of succession.*] *Bilambhatta* notices as a variation in the reading, the words here supplied; *crama-smaranam* 'declaration of the order of succession,' instead of *smaranam* 'declaration.'

15. *As for the remark, that if property were temporal.*] The sense is this: in such a case, the proposition 'another's property has been taken by him' is simply apprehended from the affirmation of the complainant. But that is apprehension, not proof. Accordingly, if it be contradicted, a doubt arises respecting the cause of right. Thus, if the complainant declare, "my goods have been taken by him," and the defendant affirm the contrary, a doubt arises in the minds of umpires, whether the thing were unjustly seized by that man, or were fairly obtained by purchase or other title: and so, from a doubt respecting a purchase or other cause of property, arises a doubt concerning property which is the effect.—*Subód'hini*.

16. *The purpose of the preceding disquisition is this.*] Admitting property to be a worldly matter; still [its nature] seems to be an unfit [subject of

\* Vide *infra*, C. 2. Sect. 1. § 1.

† Vide § 8.

Property, how-  
ever acquired, is  
partible among  
the heirs of the  
acquirer.

a blamable act, they are cleared by the abandonment of it, with prayer and rigid austerity."\* Now, if property be deducible only from sacred ordinances, that, which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs; and the atonement above-mentioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame attaches to them, since *Menu* declares "There are seven virtuous means of acquiring property: viz. inheritance &c."†

17. The first  
question (§ 7) re-  
sumed.

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

18. Property  
supposed to arise  
from partition.

18. Of these [positions], that of property arising from partition is right; since a man, to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested

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inquiry] under the head of inheritance, since it matters not whether property be temporal or spiritual. Apprehending this objection, the author proceeds to explain the purpose of the disquisition.—*Subód'hini*.

18. *Is enjoined to maintain a holy fire.*] For it is ordained by a passage of the *Véda*, that "he, who has a son born and who has black [not grey] hair, should consecrate a holy fire:" and the meaning of that passage is this; 'one who has issue (for the term son implies issue in general;) and whose hair is [yet] black, or who is in the prime of life; that is, who is capable; one, in short, who is qualified; must perform the consecration and maintenance of a holy fire.' Does not this relate to the consecration of sacrificial fires, not to the rise of property from partition? Anticipating this objection, he adds "if property were by birth &c." The meaning is this: 'if property

\* The text is apparently referred to *Menu* by the commentator *Bálam-bhatta*: but it is not found in *Menu's* institutes. A passage of similar import does, however, occur, Ch. 10. v. 111.

† *Menu*, 10. 115.

by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent: since no partition of it can be supposed, for it has been given by consent of all parties. But *Nāreda* does propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."\*

19. The supposition, that it is vested by birth, disagrees with a passage of *Nāreda* exempting from partition the father's donations.

20. So the text concerning an affectionate gift, ("What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property;"†) would not be per-

20. And with one which recognises a husband's donations to his wife.

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'arose from birth alone, a son would, even at the instant of his birth, have ownership; and since the goods are thenceforward in common, the father would not be competent to the consecration of sacrificial fires and other religious acts (as funeral repasts, rites on the birth of children, and other indispensable ceremonies,) which must be performed by the husband and wife, and which can only be accomplished by expenditure of wealth.'—*Subōd'hini* and *Bālam bhāta*.

20. The text . . . would not be pertinent, if property were vested by birth.] For, if property were vested at the instant of birth, no such gift could be made; since he would be incompetent even with the consent of the child, and one cannot give away what is common to others.—*Subōd'hini* and *Bālam bhāta*.

\* *Nāreda*, 13. 6.

\* *Vishnu* according to a subsequent quotation (§ 25.) But *Nāreda* cited by *Jaimīnīya-sūtra* (C. 4. Sect. 1. § 23.)

tinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immovable property" with the terms "what has been given" [in the text last cited ;] for that would be a forced construction by connexion of disjoined terms.

21. The exception of immovables does not imply property by birth.

Passages, excepting them, regard the ancestral estate.

21. As for the text "The father is master of the gems, pearls and corals, and of all [other movable property:] but neither the father, nor the grandfather, is so of the whole immovable estate,"\* and this other passage "By favour of the father, clothes and ornaments are used, but immovable property may not be consumed, even with the father's indulgence;"† which passages forbid a gift of immovable property through favour: they both relate to immovables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons; but it appears from this text alone, that the

#### ANNOTATIONS.

*Nor is it right to connect &c.]* Is not the text, so far from being in contradiction to the right by birth, actually founded on it? for the construction is this 'what has been given, excepting immovable property, by an affectionate husband to his wife, she may consume as she pleases, when he is dead:' thus, a right of property by birth being true in regard to immovables, since the gift of them is forbidden; and, by analogy, the same being true of other goods, a gift of wealth other than immovables is permitted by the provisions of the law: why then should not this text be propounded? Apprehending that objection, he says "Nor is it right to connect &c." The construction stated would be requisite: but it is not a proper one; for the style would be involved, if the construction connect disjoined terms.—*Subódhina.*

21. As for the text "The father is master of the gems &c." Apprehending the objection, that, since a gift of immovables through partial affection is forbidden by the plain construction of two other passages of law, birth and not partition is the cause of property, he obviates it.—*Subódhina.*

\* *Tājnyawaleya*, cited by *Jimūta-vāhana* (c. 2. § 22.)

† The name of the author is not given with any quotation of this text.

gems, pearls and other movables belong exclusively to the father, while the immovable estate remains common.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property,\*] there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

22. Property supposed to be by partition, or by demise of the owner.

23. To this the answer is: It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of *Gautama* expresses "Let ownership of wealth be taken by birth; as the venerable teachers direct."†

23. That supposition is wrong. Property is vested by birth: as expressly declared by *Gautama*.

24. Moreover the text above cited "The father is master of the gems, pearls, &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth. Nor is it right to affirm, that it relates to immovables which have descended

24. The passage before cited (§ 21.) does imply property by birth.

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23. "Let ownership of wealth &c." "By birth alone the heir may take the thing which is denominated ownership of wealth: as the venerable teachers hold."—*Subôd'hini*.

*Bâlam-bhatta* notices a variation in the reading; *art'ha-swîmitwât*, in the ablative case, instead of *art'ha-swîmitwam*, in the nominative. That reading is found in the *Dîgatalwa*; and the text is there explained in an entirely different sense.—See *Jimâta-vâhana*, C. 1. § 19.

\* *Subôd'hini* and *Bâlam-bhatta*. † Not found in *Gautama's institutes*.



from the paternal grandfather: since the text expresses "neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. Another passage before cited (§ 20.) relates to the father's acquisitions.

25. But the text of *Vishnu* (§ 20,) which mentions a gift of immovables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passages [above cited, as well as others not quoted,\* viz.] "The father is master of the gems, pearls, &c." (§ 21,) the fitness of any other but immovables for an affectionate gift was certain.

26. A preceding objection (§ 18.) refuted.

26. As for the alleged disqualification for religious duties which are prescribed by the *Véda*, and which require for their accomplishment the use of wealth, (§ 18) sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance.]

27. Property is by birth: but the father has

27. Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, [although†] the

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#### ANNOTATIONS.

27. "No gift or sale should be made."] The close of the passage is read otherwise by *Raghunandana*: "The dissipating of the means of support is censured;" *vritti-lôpô vigarhitah*, instead of *na dānan na cha vicrayah*.

\* *Bālam-bhatta*.

† *Bālam-bhatta*.

father have independent power in the disposal of effects other than immovables, for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth : but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor ; since it is ordained, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should, therefore, be made."\*

power over movables ; and is controlled in respect of immovables : as shown by passages of law.

28. An exception to it follows : "Even a single individual may conclude a donation, mortgage, or sale, of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes."†

28. A further text authorizes sale &c. by a single owner.

29. The meaning of that text is this : while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like ; or while brothers are so and continue unseparated ; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable.

29. Explanation of the text.

30. The following passage "Separated kinsmen, as those who are unseparated, are equal in respect of immovables ; for one has not power over the whole, to make a gift, sale or mortgage ;"‡ must be thus interpreted : ' among unseparated

30. Another passage expounded.

Joint purchase of land by one or more persons without consent of the other is not binding.  
W. L. 1894/17

\* Vyāsa, as cited in other compilations.

† Vṛihaspati, cited in the *Retnācara* &c. ‡ Vṛihaspati, as cited in the *Retnācara*.

Consent of separated kinsmen tends to the facility of the transaction ;

' kinsmen, the consent of all is indispensably requisite, because ' no one is fully empowered to make an alienation, since the ' estate is in common : ' but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united : it is not required, on account of any want of sufficient power, in the single owner ; and the transaction is consequently valid even without the consent of separated kinsmen.

31. Like the consent of townsmen &c required by another text.

31. In the text, which expresses, that " Land passes by six formalities ; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water ; " \* consent of townsmen is required for the publicity of the transaction, since it is provided, that " Acceptance of a gift, especially of land, should be public : " † but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. Gift of gold and water assimilates the sale to a gift of land.

32. By gift of gold and of water.] Since the sale of immovables is forbidden (" In regard to the immovable estate, sale is not allowed ; it may be mortgaged by consent of parties interested ; " ‡) and since donation is praised (" Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss , " ||) if a sale must be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water [to ratify the donation.]

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\* The author of this passage is not named.

† This passage also is anonymous.

‡ The origin of this quotation likewise has not been found.

|| *Brahme-vaivertá purána*.

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text. (Section 5 § 3.)

33. A distinction regarding the right by birth will be noticed (Sect. 5 § 3.)

## SECTION II.

*Partition equable or unequal.—Four periods of Partition.—Provision for wives.—Exclusion of a son who has a competence.*

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points, the author says,

1. Other topics resumed.

CXIV. "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose] all may be equal sharers."\*

Text of *Yājñyavalkya*.

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two or more sons.

2. Exposition of the passage.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate" (for this term is again understood) the eldest with the best "share," the middlemost with a middle share, and the youngest with the worst share.

3. Distribution by the father may be unequal.

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2. *Separate his children.*] Make them distinct and several by giving to them shares of the inheritance.—*Bālam-bhatta*.

\* *Yājñyavalkya*, 2. 114.

4. *Menu* describes this distribution.

4. This distribution of best and other portions is propounded by *Menu*. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."\*

5. Explanation of the close of the former text.

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers." That is, all, namely the eldest and the rest, should be made partakers of equal portions.

6. The estate must have been acquired by him: else the rights are equal.

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper: for equal ownership will be declared.

7. Four periods of partition: 1st, by the father's desire; 2d, on his retiring from worldly affairs:

7. One period of partition is when the father desires separation, as expressed in the text "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and

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7. *One period of partition is when the father desires separation.*] There are four periods of partition. One is, while the father lives, if he desire partition. Another is, when the mother ceases to be capable of bearing issue, and the father is not desirous of sexual intercourse and is indifferent to wealth; if his sons then require partition, though he do not wish it. Again another period is, while the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old, or addicted to vicious courses, or afflicted with an incurable disease; if the sons then desire partition. The last period is, after the decease of the father.—*Viśvēswara* in the *Madana-Pārijāta*.

There are four periods of partition in the case of wealth acquired by the father.—*Viśvēswara* in the *Subód'hini*.

Four periods of partition among sons have been stated by the author (*Vijñāneswara*,) which are compendiously exhibited in a twofold division by

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\* *Menu*, 9, 112. Vide infra. Sect. 3. § 3.

the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons, against the father's wish: as is shown by *Nāreḍa*, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead;")\* and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished."† Here the words "let sons regularly divide the wealth" are understood. *Gautama* likewise, having said "After the demise of the father, let sons share his estate;"‡ states a second period, "Or when the mother is past child-bearing;"§ and a third, "While the

as is shown by  
*Nāreḍa*.

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the contemplative saint (*Yājñavalkya*.) Here, three cases may occur under that of distribution during the life of the father: viz. with, or without, his desire for separation: the case of his not desiring it being also twofold; viz. 1st, when the mother has ceased to be capable of bearing children and the father is disinclined to pleasure &c. 2d, when the mother is not incapable of bearing issue, but the father is disqualified by vicious habits or the like.—*Subhūkhini*.

The doctrine of the eastern writers [*Jīmāta-vāhana* &c.] who maintain, that two periods only are admissible, the volition of the father and his demise, and not any third period; § and that the text, relative to the mother's incapacity for bearing more issue, regards the estate of the paternal grandfather or other ancestor; is refuted.—*Balam-bhātta*.

We hold, that while the father survives and is worthy of retaining uncontrolled power, his will alone is the cause of partition. If he be unworthy of such power, in consequence of degradation, or of retirement from the world, or the like, the son's will is likewise a cause of partition. But, in the case of his demise, the successor's own choice is of course the reason. By this mode, the periods are three. Else there must be great confusion, in the uncertainty of subject and accident, if many reasons, as extinction of worldly propensities and so forth, must be established collectively and alternatively. Thus the mention of certain reasons in some texts, and the omission of them in others,

\* *Nāreḍa*, 13. 2.

† *Nāreḍa*, 13. 3.

‡ *Gautama*, 28. 1.

§ *Gautama*, 28. 2.

§ See *Jīmāta-vāhana*, C. 1. § 41.

father lives, if he desire separation."\* So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That *Sanc'ha* declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."†

4th, on account of his disqualification; as stated by *Sanc'ha*.

8. Provision for wives.

8. Two sorts of partition at the pleasure of the father have been stated; namely, equal and unequal. The author adds a particular rule in the case of equal partition;

Text of *Yājñyavalkya*.

CXV. "If he make the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions."‡

9. Exposition of it. The wife shares like a son.

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar pro-

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are suitable: for the extinction of the temporal affections, and the other assigned reasons, indicate the single circumstance of the father's want of uncontrolled power; since it is easy to establish that single foundation of the texts.—*Veeramitródaya*.

*When the father's passions are extinguished.*] *Jimúta-váhana*'s reading of the passage is different: and there are other variations of this text.—See note on *Jimúta-váhana*, Ch. 1. § 33.

*Partition of inheritance takes place without the father's wish.*] A text of a contrary import is cited from the same author, by *Jimúta-váhana*.—See note on *Jimúta-váhana*, Ch. 1. § 43.

9. *The author subsequently directs half a share.*] This and the passage cited may be supposed to bear reference to a passage which occurs near the

\* *Gautama*, 28. 2.

† Cited as a passage of *Harita* in the *Vyavaháramayuc'ha*.

‡ *Yājñyavalkya*, 2. 115.

perty had not been given by their husband or by their father-in-law, must be made participant of shares equal to those of sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her : " Or if any had been given, let him assign the half."\*

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by *Apastamba* : " The furniture in the house and her ornaments are the wife's [property]."<sup>†</sup>

10. Excepting the deductions for the first born &c. But she takes her ornaments and the household furniture.

11. To the alternative before stated (§ 1) the author propounds an exception :

11. A trifle may be given to a son who needs not a full share.

CXVI. " The separation of one, who is able to support himself and is not desirous of participation, may be completed by giving him some "trifle."<sup>‡</sup>

Text of *Yājñyavalkya*.

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, any thing whatsoever, though not valuable, may be given, and the se-

12. Interpretation of the text.

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close of the head of inheritance (Ch. 2. Sect. 11. § 34) : but the quotation is not exact, and the text relates to a different subject.

10. *The furniture in the house &c.*] The chairs, and the earthen and stone utensils, and the ornaments worn by her, are the wife's deducted allotment. —*Haradatta*|| says the furniture, as well as the car, is the father's ; and the ornaments are the wife's. —*Bālam-bhatta*.

\* Vide infra. C. 2. Sect. 11. § 34.

† Vide infra. Sect. 3. § 6.

‡ *Yājñyavalkya*, 2. 116.

|| The scholiast of *Gautama*.



paration or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13. An illegally partial distribution is improper.\*

13. The distribution of greater and less shares has been shown (§ 1). To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds—

Text of *Yājñya-walkya*,

CXVIa. “A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid.”\*

14. Explanation of the passage.

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by *Menu* and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, *Nāreda* declares “A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate.”†

Confirmed by a quotation from *Nāreda*.

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13. *In any other mode.*] The commentator *Bālam-bhatta* prefers another reading, *anyaśāstra* ‘not according to law’ instead of *anyat’hā* ‘in any other mode.’

\* *Yājñyawalkya*, 2. 116a.

† *Nāreda*, 13. 16.

## SECTION III.

*Partition after the Father's decease.*

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode.

1. Distribution among brothers should be equable;

CXVII. "Let sons divide equally both the effects and the debts, after [the demise of] their two parents."\*

By the text of *Yājñyavalkya*.

2. After their two parents.] After the demise of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are thus indicated. Equably.] A rule respecting the mode is by this declared: in equal shares only should they divide the effects and debts.

2. Interpretation of the passage.

3. But *Menu*, having premised "partition after the death of the father and the mother,"† and having declared "The eldest brother may take the patrimony entire, and the rest may live under him as under their father;"‡ has exhibited a distribution with deductions, among brethren separating after the death of their father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."|| The twentieth part of the whole amount of the property [to be divided,§] and the best of all the chattels, must be given (by way of deduction¶) to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part, with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating

3. Objection to the restriction of equal shares; since an unequal division is authorized by *Menu*.

\* *Yājñyavalkya*, 2. 117.

† *Menu*, 9. 101.

‡ *Menu*, 9. 105.

|| *Menu*, 9. 112.

§ *Bālam-bhatta*.

¶ *Ibid*.

after their parents' decease; allotting two shares to the eldest, one-and-a-half to the next born, and one apiece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and-a-half, and the younger sons each a share: thus is the law settled."\* Thē author himself † has sanctioned an unequal distribution when a division is made during the father's life-time ("Let him either dismiss the eldest with the best share &c."‡) Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. Answer. Unequal distribution is disused; through popular prejudice; like the slaughter of kine.

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for] it secures not celestial bliss:"§ as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;"¶ and as

### ANNOTATIONS.

4. *As the slaying of a cow is for the same reason disused.*] This is a very remarkable admission of the former prevalence of a practice, which is now held in the greatest abhorrence.

\* *Menu*, 9. 116—117.

† *Yājñyavalkya*.

‡ Vide Sect. 2. § 1.

|| *Subód'hini* and *Bálam-bhatta*.

§ A passage of *Yājñyavalkya*, according to the quotation of *Mitra Misra* in the *Veeramitródaya*; but ascribed to *Menu* in *Bálam-bhatta's* commentary. It has not, however, been found either in *Menu's* or in *Yājñyavalkya's* institutes.

¶ This also is a passage of *Yājñyavalkya*, according to *Mitra Misra's* quotation; but has not been found in the institutes of that author.

the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to *Mitra* and *Varuna*."\*

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] and as the slaying of a cow for a victim, are disused, so is partition with deductions [in favour of elder brothers]."+

5. It is declared obsolete in a passage of law.

6. *Apastamba* also, having delivered his own opinion, "A father, making a partition in his life-time, should distribute the heritage equally among his sons;" and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the eldest is heir;") and having exhibited, as the notion of others, a distribution with deductions ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son, the car appertains to the father; and the furniture in the house

6. *Apastamba*, after describing an unequal partition, cites a passage of the *Veda*, which implies an equal distribution only.

### ANNOTATIONS.

5. *The duty of an appointment.* So the term (*nigôga-dharma*) is here interpreted by the author of the *Veeramitrôdaya*. But it is explained in the *Subôdhini*, as intending the injunction of an observance, such as the offering of a bull &c.

6. *In some countries the gold &c.* The sense of the text is this: In certain countries, the gold, the black kine, the black produce of earth, as *Masha*† and other dark coloured grain, or as black iron, (for so some interpret the word :) appertain to the eldest son; the car, and the furniture in the house, or utensils such as stools and the like, belong to the father; || the jewels worn by her are the wife's, as well as property which she has received from the father and other kinsmen. Such respectively are the portions of the eldest son, of the father, and of his wife.—*Subôdhini*; and *Haradatta* cited by *Bâlam-bhatta*.

\* A passage of the *Vêda*, as the preceding one is of the *Smriti*, according to the remark of the *Subôdhini* and *Bâlam-bhatta*.

† *Smriti-sangraha*, as cited in the *Veeramitrôdaya*.

‡ *Phaseolus radiatus*, || See a different interpretation, Sect. 2 § 10.

and her ornaments are the wife's ;\* as also the property [received by her] from kinsmen : so some maintain ;') has expressly forbid it as contrary to the law ; and has himself explained its inconsistency with the sacred codes : " It is recorded in scripture, without distinction, that *Menu distributed his heritage among his sons.*"†

7. Unequal division should not be practised.

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason, a restriction is ordained, that brethren should divide only in equal shares.

8. The mother's peculiar property goes to her daughters.

8. It has been declared, that sons may part the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property.

CXVIIa. " The daughters share the residue of their " mother's property, after payment of her debts."‡

9. Exposition of *Yājñavalkya's* text.

9. Let the daughters divide their mother's effects remaining over and above the debts ; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may

#### ANNOTATIONS.

*Among his sons.*] *Bālam-bhatta* reads *putrēna* "son" in the singular ; but all copies of the *Mitácšhará* and *Subódhīni*, which have been collated, exhibit the term in the plural (*putrēbhyah* "sons ;") and so does the *Tecramitródaya*, quoting this passage from the *Mitácšhará*.

8. *Sons may divide their mother's effects, which are equal to her debts or less.*] They may take the goods and must pay the debts.—*Bālam-bhatta*.

\* Vide supra. Sect 2. § 10.

† A passage of the *Taittiriya Vēda*, cited by *Āpastamba* ; as here remarked by *Bālam-bhatta*.

‡ *Yājñavalkya*, 2. 117a.

divide their mother's effects, which are equal to her debts or less than their amount.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts: and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus;" the woman's property goes to her daughters, because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

10. Sons, not daughters, are to discharge the mother's debts: but her wealth goes to her daughters, as the father's devolves on the sons.

11. On the subject [of daughters\*] a special rule is propounded by *Gautama*: "A woman's property goes to her daughters, unmarried, or unprovided."† His meaning is this: if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed: and this term signifies 'destitute of wealth.'

11. It goes first to unmarried or unprovided daughters.

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughters? the author adds—

12. One failure of daughters, it goes to her sons.

# ANNOTATIONS.

11. *Unmarried or unprovided.*] The text is explained otherwise by *Jīmātavāhana*, (C. 4. Sect. 2. § 13 and 23.)

*Married and unmarried.*] Married signifies espoused; unmarried, maiden.—*Subbāhini*.

*Endowed and unendowed.*] Endowed signifies supplied with wealth; unendowed, unfurnished with property.—*Bālam-bhatta*.

\* *Bālam-bhatta*.

† *Gautama*, 28. 22.

CXVIIb. "And the issue succeeds in their default."\*

13. Interpretation of the text of *Yājñawalkya*,

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts;"†) is here expressly declared for the sake of greater perspicuity.

#### SECTION IV.

##### *Effects not liable to Partition.*

1. Certain acquisitions are exempt from partition.

1. The author explains what may not be divided—

CXVIII. "Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the coheirs."

CXIX. "Nor shall he, who recovers hereditary property, which had been taken away, give it up to the coparceners: nor what has been gained by science."‡

2. Exposition of *Yājñawalkya's* text,

2. That, which had been acquired by the coparcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the coheirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren

\* *Yājñawalkya*, 2. 117b. † Vide § 1. ‡ *Yājñawalkya*, 2. 118—119.

or other coheirs: the person recovering it shall take such property.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren. So *Sanc'ha* ordains "Land, [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

3. *Sanc'ha* directs, that, if land be recovered by one coheir, he shall have a quarter of it.

4. In regular succession.] Here the word "inherited" must be understood.

4. A word supplied in the text.

5. He need not give up to the coheirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning: the acquirer shall retain such gains.

5. The close of the passage of *Yājñavalkya* (§ 1.) explained.

6. Here the phrase "any thing acquired by himself, without detriment to the father's estate," must be every where understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage, without waste of the patrimony; what is redeemed, of the hereditary estate, without expenditure of ancestral property; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of

6. The acquisition must have been made without charge to the patrimony.

#### ANNOTATIONS.

4. *Inherited must be understood.*] The author supplies the deficiency in the text cited by him. The words "in succession" are in the text; "inherited" must be understood to complete the sense.—*Subôd'hini*.

6. *Any thing acquired by himself.*] Here, according to *Bâlam-bhatta's* remark, either a different reading is proposed (*cinchit* for *anyat*,) or an interpretation of the words of the text, "whatever else (*anyat*)" being explained by (*cinchit*) 'any thing.'



an obligation conferred at the charge of the patrimony ; what is received at a marriage concluded in the form termed *Asura* or the like ; what is recovered, of the hereditary estate, by the expenditure of the father's goods ; what is earned by science acquired at the expense of ancestral wealth ; all that must be shared with the whole of the brethren and with the father.

7. And acquisitions so made, but not included in the enumerated sorts, are divisible.

7. Thus, since the phrase "without detriment to the father's estate" is in every place understood ; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

#### ANNOTATIONS.

*It is connected with every other member of the sentence.]* More is implied : for the same phrase is understood in every instance, stated in other codes, of acquisitions exempt from partition.—*Subód'hini*.

*In the form termed Asura.]* For, at such a marriage, wealth is received from the bridegroom by the father or kinsmen of the bride.—See *Menu*, 3. 31.

7. *Thus since the phrase &c.]* A different reading is noticed by *Balambhatta* "Not thus ;" *na tat'há* instead of "Thus" *tat'há*. It is taken as a distinct sentence ; and is explained as intimating, that, on the other hand, amicable gifts and the like, acquired without detriment to the patrimony, are not liable to partition. According to this reading and interpretation, that short sentence belongs to the preceding paragraph.

In the following sentence there seems to be another difference of reading, in the phrase "without waste (or with waste) of the patrimony." But the reading, which is countenanced by the exposition given in the *Subód'hini*, has been preferred.

*Since the phrase "without detriment to the father's estate."]* Since that portion of the text is applicable to amicable gifts and other acquisitions which are specified as exempt from partition, therefore, as those acquisitions made at the charge of the patrimony are liable to be shared, so any thing obtained by mere acceptance, not being included among such acquisitions, must be subject to partition, though procured without use of the paternal goods.—*Subód'hini*.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of *Nāreda*: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science."\* Moreover the definition of wealth, not participable, which is gained by learning, is so propounded by *Catyañjana*: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."

8. An objection refuted.

Passages of *Nāreda*.

and *Catyañjana*, on the gains of science.

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, any thing obtained by mere acceptance would be exempt from partition, contrary to established practice.

9. It is a condition in the exemption, that the gain be without loss to the patrimony.

10. This [condition, that the acquisition be without detriment to the patrimony,†] is made evident by *Menu*: "What a brother has acquired by his labour, without using

10. This is corroborated by a passage of *Menu*.

### ANNOTATIONS.

8. *As showing that such gains are exempt from partition.*] A difference in the reading of this passage, *bhājyatwāt* (in the ablative case) instead of *bhājyat-vaiva* (in the dative), is mentioned by *Bālam-bhatta*; but he makes no difference in the interpretation.

*Would contradict a passage of Nāreda.*] Since the support of the family is there stated as a reason for partaking of the property, the right of participation in the gains of science is founded on a special cause; and is not a natural consequence of relation as a brother: and the gains of science are not naturally liable to partition, and are therefore mentioned as excepted from distribution.

\* *Nāreda*, 13. 10.

the patrimony, he need not give up to the coheirs ; nor what has been gained by science.”\*

11. Exposition  
of the text.

11. By labour] by science, war or the like.

12. An objec-  
tion stated.

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition : since there was no ground for supposing a partition of them ? That what is acquired, belongs to the acquirer, and to no other person, is well known : but a denial implies the possible supposition of the contrary.

13. An errone-  
ous solution of it  
quoted.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, “ After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers ; provided they have duly cultivated science ;”† in this manner, ‘ if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder ;’ grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living : that is accordingly denied.

14. Refutation  
of it and solution of  
the difficulty.

14. The argument is erroneous : since there is not here a denial of what might be supposed ; but the text is a recital of that which was demonstratively true : for most texts, cited under this head, are mere recitals of that which is notorious to the world.

15. Another  
solution proposed.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, “ All the brethren shall be equal sharers of that which is acquired by

\* *Ménu*, 9. 208. The close of this passage is read differently by *Cullīka-bhāṭṭa*, *Jīmūta-vāhana*, &c.—See *Jīmūta-vāhana*, Ch. 9, Sect. 1. § 3.

† *Ménu*, 9. 204.

them in concert :”\* and it is therefore a mere error to deduce the suggestion from an indefinite import of the word “ eldest” in the text before cited (§ 13.) That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father’s death and after his demise.

16. Other things exempt from partition, have been enumerated by *Menu*; “ Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to distribution.”†

16. *Menu* enumerates other things exempted.

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father’s decease, to the person who partakes of food at his obsequies : as directed by *Vṛhaspati*; “ The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast.” But new clothes are subject to distribution.

17. Exposition of the text. The apparel of the brethren is retained by them. The father’s apparel is given away at his obsequies. A passage of *Bṛhaspati* confirms this. New clothes may be distributed.

18. Vehicles] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father’s must be disposed of as

18. So of vehicles. Cattle may be distributed in some cases. If few they

#### ANNOTATIONS.

18. *The number being unequal.*] Inequality here signifies insufficiency for shares ; not imparity of number. And this is fit. Suppose three horses and three sons : since the number is adequate to the allotment of shares, the horses may be divided. Suppose four horses and either three or five sons : since the horses do not answer to the number of coheirs, and cannot be distributed into

\* *Vṛhaspati* cited in the *Retnâcara*.

† *Menu*, 9. 219.

go to the eldest brother : conformably to a passage of *Menu*.

directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among coheirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother : as ordained by *Menu* ; " Let them never divide a single goat or sheep, or a single beast with uncloven hoofs : a single goat or sheep belongs to the first born."\*

19. Ornaments likewise belong to the wearer, under the text of *Menu*. Unworn ornaments may be shared.

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. " Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves : they, who do so, are degraded from their tribe."† It appears from the condition here specified (" such ornaments as are worn,") that those, which are not worn, may be divided.

20. Prepared food is to be consumed.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. A well is to be used by turns.

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares,] must not be distributed by means of the value ; but is to be used [by the coheirs] by turns.

#### ANNOTATIONS.

shares in their kind, and since a distribution by means of the value is forbidden, and the cattle is directed to be given to the eldest brother, the horse may be divided so far as they are adequate to the shares, and the surplus shall be given to the eldest. Throughout this title, imparity must be so understood.—*Subôthini*.

21. *Being unequal.*] It is thus hinted, that, if the number be adequate, partition takes place.—*Bôlum-bhatta*.

\* *Menu*, 9. 119.

† *Menu*, 9. 209.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided by the value, but should be employed in labour [for the coheirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of *Gautama* forbids it. "No partition is allowed in the case of women connected [with the father or with one of the coheirs]."\*

22. Female slaves are to labour for the heirs by turns: but concubines are not to be shared.

*Gautama* forbids it.

23. The term *yógacshéma* is a conjunctive compound resolvable into *yóga* and *cshéma*. By the word *yóga* is signified a cause of obtaining something not already obtained: that is, a sacrificial act to be performed with fire consecrated according to the *Ítáda* and the law. By the term *cshéma* is denoted an auspicious act which becomes the means of conservation of what has been obtained: such is the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as *Laugacshí* declares. "The learned have named a conservatory act *cshéma*, and a sacrificial one *yóga*; both are pronounced indivisible: and so are the bed and the chair."

23. Interpretation of *Yóga* and *Cshéma* sacrifices and pious acts, in the text before cited (§ 14.)

24. Some hold, that by the compound term *yóga-cshéma*, those, who effect sacrificial and conservatory acts (*yóga* and *cshéma*), are intended, as the king's counsellors, the stipen-

24. Other interpretations of the same term.

#### ANNOTATIONS.

22. "Women connected."] Enjoyed, or kept in concubinage.—*Sabō Vini.*

Female slaves, being taken for enjoyment by any one of the brethren or coheirs, belong exclusively to him — *Haradatta* on *Gautama*.

24. *Some hold.*] The interpretation, given by *Méd'hātīhi* and the *Calpataru*, is stated.—*Bālam-bhūta.*

\* *Gautama*, 28. 45.

diary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things are meant.

25. The common way is indivisible.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. A text of *Usanas*, concerning land, is restricted to the case of inferior sons; like a passage of *Vrihaspati*.

26. The exclusion of land from partition, as stated by *Usanas*, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a *Brahmana* by women of the military and other inferior tribes: for it is ordained [by *Brihaspati*:] "Land, obtained by acceptance of donation, must not be given to the son of a *Cshatriya* or other wife of inferior tribe: even though his father give it to him, the son of the *Brahmani* may resume it, when his father is dead."\*

27. A term in the text explained.

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. In general the father's donations to his sons are not divisible.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition.† The supposition, that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.‡

29. The acquirer has a double share if the patri-

29. It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer

#### ANNOTATIONS.

29. *He, among them.*] Among the brethren.—*Subód'hini*.

\* This is a passage of *Vrihaspati*, according to the remark of *Bálabhatta*; and it is cited as such by *Jimúta-ráhana*, C. 9, § 19.

† Sect. 6, § 13—16.

‡ Sect. 1, § 16.

shall, in such a case, have a double share, by the text of *Vasishṭha*. "He, among them, who has made an acquisition, may take a double portion of it."\* money have been used : by the text of *Vasishṭha*.

30. The author propounds an exception to that maxim.

30. Not however, where the common stock is improved.

CXX. "But, if the common stock be improved, an equal division is ordained."†

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

31. Exposition of the text of *Yājñawalkya*.

## SECTION V.

*Equal rights of Father and Son in property ancestral.*

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons.

1. Grandsons share the allotment which their deceased father would have had.

CXXa. "Among grandsons by different fathers, the allotment of shares is according to the fathers."‡

## ANNOTATIONS.

1. *Grandsons by different fathers.*] Children of distinct fathers; meaning sons of Brothers. Another reading also occurs : *pramīta-pitricānām* "whose fathers are deceased," instead of *anēca-pitricānām* "whose fathers are different."—*Subōd'hini*.

*Bālam bhattacha* notices another variation of the reading, but with disapprobation; *anēca-pitryacānām*. It intends the same meaning, though inaccurately expressed.

\* *Vasishṭha*, 17. 24.

† *Yājñawalkya*, 2. 120.

‡ *Yājñawalkya*, 2. 120a.



2. Exposition  
of *Yājñavalkya's*  
text.

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons; still the distribution of the grandfather's property must be adjusted through their fathers, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die, leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four; the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment proscribed by the text.

3 The right of  
father and son in

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grand-

#### ANNOTATIONS.

3. *If he be deceased.*] A variation in the reading and punctuation of the passage is noticed by *Bālam-bhatta*: '*vibhāgó n'ásti d'hriyamāné; apitari pitritó bhāga-calpanētyuctatvāt,*' (instead of *vibhāgó n'ásti; ad'hriyamāné pitari pitritó* &c.) "partition would not take place, if he be living, since it is directed that shares shall be allotted in right of the father, if he be deceased."

*To obviate this doubt the author says.*] "If the father be alive, and separated from his own father, or if, being an only son with no brothers to participate with him, he be alive and not separated from his own father; then, since in the first mentioned case he is separate, no participation of the grandson's own father, in the grandfather's estate, can be supposed, and therefore, as well as because he is surviving, the grandson cannot be supposed entitled to share the grandfather's property, since the intermediate person obstructs his title: and, in the second case, although the grandson's own father have pretensions to the property, since he is not separated, still the participation of the grandson in his grandfather's estate cannot be supposed, for his own father is living: hence no partition of the grandfather's effects, with the grandson whose father is living, can take place in any circumstances. Or, admitting that such partition

father's estate with the grandson would not take place ; since it has been directed, that shares shall be allotted, in right of the father, if he be deceased : or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions : to obviate this doubt the author says ;

property ances-  
tral, is equal.

CXXI. "For the ownership of father and son is "the same in land, which was acquired by the grand-  
"father, or in a corrody, or in chattels [which  
"belonged to him.]"\*

4. Land] a rice field or other ground. A corrody] So many leaves receivable from a plantation of betle pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or other movables.

4. Explanation  
of Yājñawalkya's  
text.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service, †] the ownership of father and son is notorious : and therefore partition does take place. For, or because, the right is equal,

5. Since the  
right is equal,  
partition is not  
by the father's  
choice only ; nor  
has he a double  
share.

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may be made, because he has a right by birth ; still, as the father's superiority is apparent, (since a distribution by allotment to him is directed, when he is deceased ; and that is more assuredly requisite, if he be living :) it follows, that partition takes place by the father's choice and that a double share belongs to him.—*Subôl'hini*.

[For the ownership of father and son.] The *Calpataru* and *Aparâra* read "The ownership of both father and son" instead of "For the ownership of father and son :"  
*chôbhayôh* instead of *chaiva hi*.

4. *Betle pepper*.] Piper betle *Linn.* Betle leaf.

*Areca*.] Areca *Fausl. Goert.* Betle-nut.

\* *Yājñawalkya*, 2. 121.

† *Balam-bhatta*.

or alike, therefore partition is not restricted to be made by the father's choice ; nor has he a double share.

6. For the same reason, the distribution is as before stated (§ 1.)

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," (§ 1.) although the right be equal.

7. Other passages reconciled.

7. The first text "When the father makes a partition &c." (Sect. 2 § 1.) relates to property acquired by the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself."\* The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age;"† must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live,"‡ must also be referred to the same subject.

8. Partition of the grandfather's estate may be exacted by the sons from their father.

8. Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. The grandson may interpose to prevent the dissipation of the inherited property by the father ; but not his acquired property.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather : but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependant.

10. The distinc-

10. Consequently the difference is this : although he

\* *Náreda*, 13. 12.

† The remainder of this passage has not been found ; nor is the text cited in other compilations. *Bálam-bhatta* ascribes it to *Menu* ; but it is not found in his institutes.

‡ *Menu*, 9. 204.

have a right by birth in his father's and in his grandfather's property; still, since he is dependant on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.\*]

tion stated explicitly.

11. *Menu* likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather; declaring, as he does ("If the father recover paternal wealth not recovered by his coheirs, he shall not, unless willing, share it with his sons, for in fact it was acquired by him:†")‡ that, if the father recover property, which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions.

11. A passage of *Menu* cited and explained.

## SECTION VI.

### *Rights of a Posthumous Son and of one born after the Partition.*

1. How shall a share be allotted to a son born subsequently to a partition of the estate? The author replies—

1. A son, born after partition, is entitled to share: conformably with the text of *Yājñavalkya*.

CXXII. "When the sons have been separated, "one who is [afterwards] born of a woman equal in "class, shares the distribution."‡

\* *Subbāhini*.

† *Menu*, 9. 209.

‡ *Yājñavalkya*, 2. 122.

2. He takes the allotments of his father and mother.

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother: he shares that; in other words, he obtains after [the demise of\*] his parents, both their portions: his mother's portion, however, only if there be no daughter; for it is declared that "Daughters share the residue of their mother's property after payment of her debts."†

3. Born of a woman of a different tribe, he takes only his proper allotment (Sect. 8.)

3. But a son by a woman of a different tribe, receives merely his own proper share, from his father's estate, with the whole of his mother's property [if there be no daughter ‡]

4. Passages of *Menu* and *Bṛihaspati* of like import.

4. The same rule is propounded by *Menu*: "A son, born after a division, shall alone take the parental wealth."|| The term parental (*pitryam*) must be here interpreted 'appertaining to both father and mother:' for it is ordained, that "A son, born before partition, has no claim on the wealth of his parents; nor one, begotten after it, on that of his brother."§

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2. *If there be no daughter.*] But, if there be a daughter, the son does not take his mother's portion.—*Subód'hini*.

3. *His own proper share.*] See Section 8.

*From his father's estate.*] *Bálam-bhatta* here notices a different reading; *pitryam* in the accusative, for *pitriyát* in the ablative: and afterwards, *mátrican* "maternal" for *mátuh* "his mothers." The sense is not materially affected by these variations.

4. *On the wealth of his parents.*] This passage, being read differently by *Jímúta-váhana*, (Ch. 7. §5,) who writes *pitryé* "parental or paternal" instead of *pitróh* "of both parents," is not less ambiguous according to that reading, than the text cited from *Menu*.

\* *Bálam-bhatta*.

† *Yágyawalkya*, 2. 118. Vide supra. Sect. 3. § 8.

‡ *Menu*, 9. 216.

§ *Subód'hini*.

§ *Vṛihaspati*.

5. The meaning of the text is this : one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their elder children ;\*] nor is one, born of parents separated [from their children,] a proprietor of his brother's allotment.

5. Exposition of the text last cited.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained : "AH the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition : those, born before it, are declared to have no right."†

6. - The father's subsequent acquisitions belong to the son born after separation.

7. But the son, born subsequently to the separation, must, after the death of his father, share the goods with those who reunited themselves with the father after the partition : as directed by *Menu* ; " Or he shall participate with such of the brethren, as are reunited with the father."‡

7. To be shared however with such brothers as were reunited.

8. When brethren have made a partition subsequently to their father's demise, how shall a share be allotted to a son afterwards? The author replies—

8. Right of a posthumous son ;

CXXIIa. "His allotment must absolutely be made, out of the visible estate corrected for income and expenditure."§

declared in a passage of *Yājñavalkya*.

#### ANNOTATIONS.

5. *In the share.*] *Bālam-bhatta* censures another reading, *vibhāgē* "in the division," for *bhāgē* "in the share."

8. *Absolutely.*] The particle *cā* is here employed affirmatively. The meaning is, that an allotment for them should be made only from the visible estate corrected for income and expenditure.—*Subōd'hini*.

\* *Bālam-bhatta*.

† *Vrikaspati*. See *Jimāta-vākana*, Ch. 7. § 6.

‡ *Menu*, 9. 216.

§ *Yājñavalkya*, 2. 122a.

9. Exposition  
of the text.

9. A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is "his allotment." But whence shall it be taken? The author replies, "from the visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son.]

10. An equal  
share is formed  
for him, out of the  
allotments of the  
rest; making al-  
lowance for gain  
and for debts,

10. The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts, a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

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9. *His allotment.*] The pronoun "his" refers to the son born after partition. --*Subód'hini.*

*Corrected for income and expenditure.*] If agriculture or the like have been practised by the brethren with their several shares after separation, the gain is "income." The payment of the father's debts, the support of their own families, and similar disbursements constitute "expenditure." Counting the income in the shares, and deducting the expenditure from the allotments, as much as may be in each instance proper, should be taken from each portion, and an allotment be thus adjusted for a son born of a pregnancy which existed at the moment of the father's decease, as well as the time of the partition, though not then manifest. --*Subód'hini.*

10. *Including in the several shares &c.*] It is the patrimony though divided, as much as when undivided. Since then the offspring, though yet in the mother's womb, is entitled to a share of the father's goods, as being his issue, therefore that offspring is entitled to participate in the gain arising out of the patrimony. Here again, if it be a male child, he has a right to an equal share [with others of the same class.] But, if a female child, she participates for a

11. Thus must be understood to be likewise applicable in the case of a nephew, who is born after the separation of the brethren; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

11. The posthumous son of a brother has the same right.

12. But, if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as *Vasishṭha* directs, "Partition of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant.]\*" This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

12. If the pregnancy be manifest, the partition should be postponed until after the delivery: as directed by, *Vasishṭha*.

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quarter of the share due to a brother of the same rank with herself. This, which will be subsequently explained, should be here understood.—*Subd'hini*.

11. *Who was yet childless*] This is according to the reading and interpretation followed by *Bālam-bhatta*. He notices, however, another reading, (*aprajasya* instead of *aprajasi*) which connects the epithet of "childless" with the brother.

12. *Such of the women as are childless but pregnant.*] *Vāchस्पति Misra* connects the word "women" (or 'wives') with the term "brothers." The *Calpataru*, and other compilations, also understand the wives of brothers to be meant; but, in the *Smṛiti-chandricā*, the passage is interpreted as relating to the widows of the father. All concur in explaining it as meant of pregnant widows.

*This text should be interpreted*] The most natural construction of the original text is 'Partition of heritage is among brothers and women who are childless; until the birth of issue.' The authors of the *Calpataru* and *Chintāmani* follow that interpretation, and conclude that 'a share should be set apart for the widow who is likely to have issue (being supposed pregnant.)' and, when she is delivered, the share is assigned to her son, if she bear male issue; but, if a son be not born, the share goes to the brethren, and the woman shall have a maintenance.' The author of the *Smṛiti-chandricā*

\* The first part of this passage corresponds with a text of *Vasishṭha's* institutes (17. 36.) ; but the sequel of it is not to be found in that work.



13. Presents of  
parents to their  
children are in-  
contestable :

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's.\* But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition ; or, if actually given, must not be resumed. So the author declares :

according to *Yājñ-  
nyawalkya*.

CXXIII. "But effects, which have been given  
"by the father, or by the mother, belong to him on  
"whom they were bestowed."†

14. Whether  
given after a divi-  
sion ;

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him ; and does not become the property of the son born after the partition.

25. Or before  
it.

15. By parity of reason, what was given to any one, before the separation, appertains solely to him.

16. This equal-  
ly holds good  
when the separat-

16. So, among brethren, dividing the allotment of their parents who were separated from them, after the demise of

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acknowledges that to be the natural construction of the words ; but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text, nearly as it is explained in the *Mitácshará*, viz. 'Among brothers, who have continued to live together, until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known ; and does not take place immediately after the obsequies.' *Viśwésvara-bhalla*, in the *Madana-Párijáta*, exhibits a similar interpretation ; 'Partition takes place after awaiting the delivery of widows who are evidently pregnant.'

\* Vide supra. § 1.—7.

† *Yājñyawalkya*, 2. 123.

those parents, (as may be done by the brothers, if there be no son born subsequently to the original partition;) what had been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

ed sons are the heirs.

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### SECTION VII.

*Shares allotted to provide for widows and for the nuptials of unmarried daughters.—The initiation of uninitiated brothers defrayed out of the joint funds.*

1. When a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed. ("If he make the allotments equal, his wives must be rendered partakers of like portions."\*) The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father :

1. The widows of the father are entitled to equal shares with the sons ;

CXXIIIa. "Of heirs dividing after the death of the father, let the mother also take an equal share."†

as provided by Yājñawalkya.

2. Of heirs separating after the decease of the father, the mother shall take a share equal to that of a son ; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained.‡

2. Exposition of the text. They take only half, if they have peculiar property.

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2. *Provided no separate property had been given.*] Peculiar property of a woman (*Strid'hana*.) Vide C. 2. Sect. 11. § 1.

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\* Section 2. § 8.

† Yājñawalkya, 2. 123a.

‡ Vide C. 2. Sect. 11. § 34.

3. The initiation of brothers should be completed out of the common funds,

3. If any of the brethren be uninitiated, when the father dies, who is competent to complete their initiation? The author replies :

CXXIV. "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed."\*

4. Exposition of *Yājñyavalkya's* text.

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

5. For the marriage of sisters, quarter shares are allotted.

5. In regard to unmarried sisters, the author states a different rule :

CXXIVa. "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share."†

6. Explanation

6. The purport of the passage is this : Sisters also, who

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3. *Initiation.*] *Saṁscāra* ; a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread, or with the return of the student to his family and finally his marriage.

4. *By the brethren who make a partition &c.*] By such, for whom all the initiatory ceremonies, including marriage, have been completed.—*Bālam-bhatta*.

*After the decease of their father.*] In like manner, while the father is living but disqualified by degradation from his tribe or other incapacity, if the brethren be themselves the persons who make the partition, the same rule must be understood in regard to the initiation of brothers at the charge of the common stock.—*Bālam-bhatta*.

6. *The purport of the passage is this.*] As commentators disagree in their interpretation of the text, and a subtle difficulty does arise, the author proceeds

\* *Yājñyavalkya*, 2. 124.

† *Yājñyavalkya*, 2, 124a.

are not already married, must be disposed of, in marriage, by the brethren, contributing a fourth part out of their own allotments. Hence it appears, that daughters also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother, and shall be so contributed; but that the girl shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The

of *Yājñavalkya's* text. A quarter is not to be taken from every brother's share; but a portion, equal to a quarter of the amount of a brother's share, is assigned to the sister.

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to show, that his own exposition, and no other, conveys the real sense of the passage. Taking the phrase "the uninitiated should be initiated" as here understood from the preceding sentence (§ 3,) he expounds the text: 'Sisters also, who are not already married &c.'

Some thus interpret the words "own share:." 'After assigning as many shares as there are brothers, a quarter part should be given to a sister, out of their several allotments: so that, if there be two or more sisters, a quarter of every share must be given to each of them.'

But others thus expound those terms: 'Deducting a quarter from each of their shares, the brothers should give that to a sister. If there be two or more sisters, they and their brothers shall respectively take the same subtracted share [and residue:] and no separate deduction shall be made [for each.]'

Both interpretations are unsuitable: for, according to the first, if there be one brother and seven or eight sisters,\* nothing will remain for the brother, if a quarter must be given to each sister; or, if there be one sister and many brothers, the sister has a greater allotment than a brother, if a quarter must be given to her by each of her brothers; and this is inconsistent with a text, which indicates, that a daughter should have less than a son.

Under the second exposition, if there be one sister and numerous brothers, the same objection arises, which was before stated; or, in the case of one brother and seven or eight sisters, suppose the amount of brother's share to be a *nishca*, the quarter of that is very inconsiderable, and the allotment of shares out of it is still more trifling: the terms of the text "giving them, as

\* If there be four sisters, nothing will remain for the brother; if there be a greater number, the allotment of a quarter to each is impossible. C.

sense expressed is this: if the maiden be daughter of a *Brahmani*, she has a quarter of so much as is the amount of an allotment for a son by a *Brahmani* wife.

7. Example, where the brothers and sisters are of the same tribe.

7. For example, if a certain person had only a *Brahmani* wife, and leaves one son and one daughter; the whole paternal estate should be divided into two parts, and one such part be sub-divided into four: and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts; and one such part be sub-divided into four: and, the quarter having been given to the girl, the remainder shall be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into thirds, and two shares be severally sub-divided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue.

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an allotment, the fourth part," (§ 5) would be impertinent; or, admitting that the precept is observed, still there would be an inconsistency.

But, according to our method, since each sister has exactly a quarter of a share, there is nothing contradictory to the terms of the text "a fourth part" (§ 5.)—*Subódhini*.

7. *Divided into two parts, and one such part . . . into four.*] If the text be not so explicit, it might have been rather concluded, that the estate should be divided into five parts; one for the sister, and four for the brother. which would be exactly an allotment of a quarter of the amount of a brother's share to a sister. But, according to the distribution exemplified in the text, the sister receives one quarter of that which she would have received, had she been male instead of female. It is, however, in the instance first stated, a seventh only of what her brother actually reserves for himself.

This is consonant to *Méd'hatikhi's* interpretation of a parallel passage of *Menu*:\* where he observes, that 'if the maiden sisters be numerous, the portions are to be adjusted at the fourth part of an allotment for a brother

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\* Vide infra. § 9.

It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank.

8. But, if there be one son of a *Brahmani* wife and one daughter by a *Cshatriya* woman, the paternal estate should be divided into seven parts; and the three parts, which would be assignable to the son of a *Cshatriya* woman, must be sub-divided by four: then, giving such fourth part to the daughter of the *Cshatriya* wife, the son of the *Brahmani* shall take the residue. Or, if there be two sons of the *Brahmani* and one daughter by the *Cshatriya* wife, the father's estate shall be divided into eleven parts; and three parts, which would be assignable to a son by a *Cshatriya* wife, must be sub-divided by four: having given such quarter share to the daughter of the *Cshatriya*, the two sons of the *Brahmani* shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

8. Instance, where they are of different tribes.

9. Nor is it right to interpret the terms of the text ('giving the fourth part' § 5) as signifying 'giving money sufficient for her marriage,' by considering the word "fourth" as indefinite. For that contradicts the text of *Menu* "To

9. The allotment of a fourth is not indefinite; intending merely a sufficiency for defraying the charges of the marriage.

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'of the same class: thus the meaning is, let the son take three parts, and let the damsel take the fourth.'

9. For her marriage] *Sanscāra* (§ 3.) signifies, in this instance, marriage: since the previous ceremonies are not performed for females, but only for male children.—*Subōd'hini* §c.

"Out of their own allotments respectively."] A difference in the reading of this passage is remarked in the notes on *Jimūta-rāhana*, (C. 3. Sect. 2 § 36.) A further variation occurs in the commentary by *Mēd'hātīhi*, who reads *Swābhyaḥ swābhyaḥ* "to their own sisters;" that is, 'sisters of their own classes respectively.'

the maiden sisters, let their brothers give portions out of their own allotments respectively : to each the fourth part of the appropriate share ; and they, who refuse to give it, shall be degraded.”\*

10    Explana-  
tion of a text of  
*Menu* of like im-  
port.

10. The sense of this passage is as follows. Brothers, of the sacerdotal and other tribes, should give to their sisters belonging to the same tribes, portions out of their own allotments ; that is, out of the shares ordained for persons of their own rank, as subsequently explained.† They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But, to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division, when the rank is dissimilar and the number unequal, has been stated : and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin : “ They, who refuse to give it, shall be degraded.” (§ 9.)

11. An objec-  
tion answered.

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed : the answer is, no ; for there is not any proof, that the allotment of a quarter of a share is inde-

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“ *To each the fourth part of the appropriate share.*”] This part of the text is understood differently by *Jimāta-vāhana*, C. 3. Sect. 2. § 36.

11. *In both codes.*] In the text of *Yājñyavalkya* and in that of *Menu*.—*Subd'hini*.

*Pronounced to be a sin.*] In *Menu's* text. (§ 9.)—*Bālam-bhatta*.

\* *Menu*, 9. 118.

† Sect. 8. § 4.

finite in both codes ; and the withholding of it is pronounced to be a sin.

12. As for what is objected by some, that a sister, who has many brothers, would be greatly enriched, if the allotment of a [fourth\*] part were positively meant ; and that a brother, who has many sisters, would be entirely deprived of wealth ; the consequence is obviated in the manner before explained :† it is not here directed, that a quarter shall be deducted out of the brother's own share and given to his sister ; whence any such consequence should arise.

12. A further objection confuted.

13. Hence the interpretation of *Méd'hâtî'hi* who has no compeer, as well as of other writers, who concur with him, is square and accurate ; not that of *Bhâruchi*.

13. *Méd'hâtî'hi's* doctrine is right, not *Bhâruchi's*.

14. Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But, before his demise, she obtains that only, whatever it be, which her father gives ; since there is no special precept respecting this case. Thus all is unexceptionable.

14. Before the father's demise, a daughter can have only what he pleases to give her.

### ANNOTATIONS.

13. *Who has no compeer.*] Who is independent of control.—*Bâlam-bhatta*. This commentator treats *Asahâya* as an epithet of the author next named (*Méd'hâtî'hi*.) The word occurs, however, as a proper name in the *Vivâdaratnâcara*, in commenting on a passage of *Menu* (9. 165.) The meaning may be that 'the opinion of *Asahâya*, *Méd'hâtî'hi*, and the rest is accurate : not that of *Bhâruchi*.'

*Méd'hâtî'hi* is a celebrated commentator on *Menu* : and his exposition of *Menu's* text (§ 9.) agrees with the author's explanation of *Yājñavalkya's* (§ 5.)

*Bhâruchi*, an ancient author, probably maintained the opinion and interpretation which are refuted in the present Section.

\* *Bâlam-bhatta*.

† § 6.



## SECTION VIII.

*Shares of Sons belonging to different Tribes.*

1. Partition among sons by women of different tribes,

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding passages ("When the father makes a partition &c."\*) The author now describes partition among brethren dissimilar in class :

declared by *Yājñyavalkya*.

CXXV. "The sons of a *Brahmana*, in the several tribes, have four shares, or three, or two, or one; the children of a *Cshatriya* have three portions, or two, or one; and those of a *Vaisya* take two parts, or one."†

2. Explanation of the text.

2. Under the sanction of the law,‡ instances do occur of a *Brahmana* having four wives; a *Cshatriya*, three; *Vaisya*, two: but a *Sudra*, one. In such cases, the sons of a *Brahmana*, born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of these tribes.

3. Etymology of a term contained in it.

3. The several tribes (*varnasas*).] Women of the different classes, the sacerdotal and the rest, here signified by the word tribe (*varna*.) The termination *sas*, subjoined to noun in the singular number and locative or other case, bears a distributive sense, conformably with the grammatical rule.||

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 ANNOTATIONS.

2. *Under the sanction of the law.*] The initial words of a passage of *Yājñyavalkya* (1. 57.) are cited in the text, for the sanction of the practice here noticed.

3. *Conformably with the grammatical rule.*] The author quotes a rule of grammar.—(*Pāṇini*, 5. 4. 43.)

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\* Section 2. § 1.

† *Yājñyavalkya*, 2. 125.

‡ *Yājñyavalkya*, 1. 57.

|| *Pāṇini*, 5. 4. 43.

4. The meaning here expressed is this : The sons of a *Brahmana*, by a *Brahmani* woman, take four shares apiece : his sons by a *Cshatriya* wife, receive three shares each ; by a *Vaisya* woman, two ; by a *Sudra*, one.

4. Distribution among the sons of a *Brahmana*.

5. The sons of a *Cshatriya*, born to him by women of the several tribes, (for that is here understood,) have three shares, or two, or one, in the order of the tribes : that is, the sons of a *Cshatriya* man, by a *Cshatriya* woman, take three shares each ; by a *Vaisya* woman, two ; by a *Sudra* wife, one.

5. Among the sons of a *Cshatriya*.

6. The sons of a *Vaisya*, by women of the several tribes, (for here, again, the same term is understood,) have two shares, or one, in the order of the classes : that is, the sons of a *Vaisya* man, by a *Vaisya* woman, take two shares a piece ; by a *Sudra* woman, one.

6. Among the sons of a *Vaisya*.

7. Since a man of the servile tribe cannot have a son of a different class from his own, because one wife only is allowed to him, (for "a *Sudra* woman only must be the wife of a *Sudra* man ;"\*) partition among his children takes place in the manner before-mentioned.

7. Among the sons of a *Sudra*.

8. Although no restriction be specified in the text (§ 1.), it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared [by *Vrihaspati*†] "Land obtained by acceptance of donation, "must not be given to the son of a *Cshatriya* or other wife "of inferior tribe : even though his father give it to him, the

8. Land received in gift is exclusively taken by the *Brahmani's* son : as directed by *Vrihaspati*.

#### ANNOTATIONS.

7. In the manner before-mentioned.] As directed by the texts above cited, (*Yājñawalkya*, 2. 115. and 118. Vide Sect. 2. and 3.)—*Subōd'hini*.

\* Menu, 3, 13.

† *Bālam-bhatta* supplies the author's name.

"son of the *Brahmani* may resume it, when his father is "dead."

9. Acquired by other means, as purchase &c. it is shared by the sons of the *Cshatriya* and *Vaisya*; but not by the *Súdra's* son.

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a *Cshatriya* or other inferior woman. For the son by a *Sudra* woman is specially excepted ("The son, begotten on a *Sudri* woman by any man of a twice-born class, is not entitled to a share of land."\*) Now, if land acquired by purchase and similar means did not belong to the sons of a *Cshatriya* or *Vaisya* wife, the special exception of a son by a *Sudra* woman would be impertinent.

10. The entire exclusion of the son by a *Sudra* woman, as ordained by *Menu*, supposes something to have been bestowed on him by his father.

Else he shares the movables.

10. But the following text "The son of a *Brahmana*, a *Cshatriya* or a *Vaisya*, by a woman of the servile class, shall not share the inheritance: whatever his father may give him, let that only be his property:"† relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a *Sudra* woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the movables]. Thus there is nothing contradictory.

#### ANNOTATIONS.

9. *Begotten on a Sudri woman.*] *Sudri* does not here bear its regular signification of 'wife of a *Sudra* man,' but intends a wife of the regenerate man, being a *Sudra* woman.—*Subód'hini* and *Bálam-bhatta*.

*The special exception of a son by a Sudra woman would be impertinent.*] Since the son of the *Sudra* is specifically excepted, it follows, that the sons of the *Cshatriya* wife and those of the *Vaisya* do participate.—*Subód'hini*.

10. *Where something . . . has been given.*] Where an affectionate gift has been bestowed. In some copies, the reading is so: (*prasáda-dattam* in place of *pradattam*.)—*Bálam-bhatta*.

\* This also is a passage of *Vrihaspati*. See *Jímáta-váhana*, Ch. 9. § 22.

† *Menu*, 9. 155.

SECTION IX.

*Distribution of effects discovered after Partition.*

1. Something is here added respecting the residue after a general distribution of the estate.

1. *Yājñavalkya* directs the distribution of goods which were withheld from partition.

CXXVI. "Effects, which have been withheld by "one coheir from another, and which are discovered "after the separation, let them again divide in equal "shares: this is a settled rule."\*

2. What had been withheld by coparceners from each other, and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the partition of the patrimony. Such is the settled rule or maxim of the law.

2. When discovered, they shall be divided.

3. Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

3. In equal shares, by all the coheirs.

4. Since the text is thus significant, it does not imply, that no offence is committed by embezzling the common property.

4. The embezzlement was an offence.

5. Is it not shown by *Menu* to be an offence on the part of the eldest brother, if he appropriate to himself the common property; and not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."†

5. Is it so, only if committed by an elder brother, as in a passage of *Menu*?

\* *Yājñavalkya*, 2. 126.

† *Menu*, 9. 213.

6. No. If criminal in an elder brother, it is so, a. fortiori, in a younger brother.

A passage of the *Véda* declares the guilt in general terms.

7. Explanation of that passage.

8. Embezzlement of common property is criminal in any person.

9. The use of it, under the supposition of a right to do so, is argued to be innocent.

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother, who is independent and represents the father, it is more assuredly shown (by the argument exemplified in the loaf and staff) to be criminal in younger brothers, who are subject to the control of the eldest and hold the place of sons. Accordingly it is declared [in the *Véda*\*] to be an offence without exception or distinction: "Him, indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson."†

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right: or, if he do not immediately destroy him, he destroys his son or his grandson.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest.]

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion, that the common property appertains also to him.

### ANNOTATIONS.

6. *By the argument exemplified in the loaf and staff.*] If a staff, to which a loaf is attached, be taken away by thieves, it is inferred, that assuredly the loaf also has been stolen by them.‡ So, in the case under consideration, if the eldest, who is independent and represents the father, be criminal for withholding the goods, the same may surely be affirmed concerning the rest, if they do so.—*Subódhini*.

\* *Bálam-bhatta*.

† A passage of the *Véda*, as observed by *Bálam-bhatta*.

‡ See *Jimúta-váhana*, 2, 25, & 3, 1, 15.

10. That is wrong. He does incur blame: for, though he took it thinking it his own; still he has taken the property of another person, contrary to the injunction which forbids his so doing.

10. But still the offence is committed.

11. As in answer to a proposed solution of a difficulty 'If an oblation of green kidney beans\* be not procurable, and black kidney beans† be used in their stead, by reason of the resemblance, the maxim, which prohibits the employment of these in sacrifices, is not applicable, because they were used by mistake for ground particles of green kidney beans;' it is on the contrary maintained, as the right opinion, that, 'although the ground particles of green kidney beans be taken as being unforbidden, still the ground particles of black

11. An illustration from the *Mimāṃsā*.

#### ANNOTATIONS.

11. *As in answer to a proposed solution.*] The author here adduces an example of reasoning from the *Mimāṃsā*, in the 6th book (*Ad'hyāya*,) 3d Section (*pāda*) and 6th topic (*ad'hicarana*.)—*Subōd'hini*.

The black kidney bean, with certain other kinds of grain, is declared by a passage of the *Vēda* unfit to be used at sacrifices. An oblation of green kidney beans, by another passage of the same, is directed to be made on certain occasions. If then the green sort be not procurable, may the black kind be used in its stead? The solution first proposed is, that the black sort may be substituted for the green kind, in like manner as wild rice is used in place of the cultivated sort: and, in answer to the argument drawn from the special prohibition, it is pretended, that the prohibition holds against the use of the black kidney bean as such, and not against its use when ground particles of this and other sorts are taken with particles of green kidney beans as being unforbidden. But the correct and demonstrated opinion is, that the black kind is altogether unfit to be used at sacrifices, being expressly prohibited: its particles, therefore, although intermixed with other sorts, are to be avoided; and for this reason they must not be used as a substitute for the other kind.—*Subōd'hini* and *Bālam-bhatta*.

\* *Muṣga*: *Phaseolus Mungo*; green kidney beans.

† *Māsha*: *Phaseolus Max*, *v. radiatus*: black kidney beans.

kidney beans are also actually employed : and the prohibitory command is consequently applicable in this case.'

12. Conclusion. 12. Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

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### SECTION X.

#### *Rights of the Dwyámushyáyana or Son of two Fathers.*

1. The issue of one by the wife of another, is heir to both. 1. Intending to propound a special allotment for the *Dwyámushyáyana* (or son of two fathers,) the author previously describes that relation.

CXXVII. "A son, begotten by one, who has "no male issue, on the wife of another man, under a "legal appointment, is lawfully heir, and giver of "funeral oblations, to both fathers."\*

2. Interpretation of *Yájnyawaleya's* text. 2. A son, procreated by the husband's brother or other person (having no male issue,) on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's

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### ANNOTATIONS.

1. *Dwyámushyáyana, or son of two fathers* ] As here described, the *Dwyámushyáyana* is restricted to one description of adoptive son, the *Cshétroja* or son of the wife : but the term is applicable to any adopted son retaining his filial relation to his natural father with his acquired relation to his adoptive parent.—See Sect. 11. § 32.

2. *In the manner before ordained.*] The initial words of another passage of *Yájnyawaleya* are here cited. It is as follows : "Let the husband's "brother, or a kinsman near or remote, having been authorized by venerable

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\* *Yájnyawaleya*, 2. 127.

husband: he is successor to their estates, and giver of oblations to them, according to law.

3. The meaning of this is as follows. If the husband's brother, or other person, duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other; the son, whom he so begets, is the child of two fathers and denominated *Dwyámushyáyana*. He is heir to both, and offers funeral oblations to their manes.

3. Further explanation of it.

4. But, if one, who has male issue, being so authorized, have intercourse with the wife for the sake of raising up issue to her husband only; the child, so begotten by him, is son of the husband, not of the natural father: and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes. It is so declared by *Menu*: "The owners of the seed and of the soil may be considered as joint owners of the crop, which they agree by special compact, in consideration of the seed, to divide between them."\*

4. But, if the natural father have other male issue, the child is son of the husband only; as appears from a passage of *Menu*.

5. By special compact.] When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced, belong to us both;" then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground.

5. Exposition of the text.

#### ANNOTATIONS.

"persons, and being anointed with butter, approach the childless wife at proper seasons, until she become pregnant. He, who approaches her in any other mode, is degraded from his tribe. A child, begotten in that mode, is the husband's son, denominated (*Cshétraja*) son of the wife."†

\* *Menu*, 9. 53.

† *Yājñavalkya*, 1. 69—70.



6. Another passage of the same author.

6. So [the same author.] "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner; for the soil is more important than the seed."\*

7. If there be no stipulation, the child belongs to the mother's husband.

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground: for the receptacle is more important than the seed; as is observed in the case of cows, mares and the rest.

8. The commission to raise up issue is restricted to an affianced wife: as appears from a comparison of passages of *Menu*.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by *Menu*. For, after thus premising a commission, "On failure of issue, the desired offspring may be procreated, either by his brother or some other kinsman, on the wife who has been duly authorized: anointed with liquid butter, silent, in the night, let the kinsman, thus appointed, beget one son, but a second by no means, on the widow [or childless wife;]"† *Menu* has himself prohibited the practice: "By regenerate men, no widow must be authorized to conceive by any other: for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is no where mentioned in the nuptial prayers; nor is the marriage of widows noticed in laws concerning wedlock. This practice, fit only for cattle, and

#### ANNOTATIONS.

8. The commission . . . is relative to a woman who was only betrothed.] The commentator, *Bilam-bhatta*, dissents from this doctrine: and cites passages of law to show, that, after troth verbally plighted, should the intended husband die before the actual celebration of the marriage, the damsel is at the disposal of her father to be given in marriage to another husband. It is unnecessary to go into his explanation of the passages cited in the text, in support of another opinion.

\* *Menu*, 9. 52.

† *Menu*, 9. 59.—60.

reprehended by learned priests, was introduced among men, while *Véna* had sovereign sway. He, possessing the whole earth, and therefore eminent among royal saints, gave rise to a confusion of tribes, when his intellect was overcome by passion. Since his time, the virtuous censure that man, who, through delusion of mind, authorizes a widow to have intercourse for the sake of progeny.”\*

9. Nor is an option to be assumed from the [contrast of] precept and prohibition. Since they, who authorize the practice, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women; and continence is no less praised. This, *Menn* has shown: “Let the faithful wife emaciate her body by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband. Many thousands of *Brahmanas*, having avoided sensuality from their early youth, and having left no issue in their families, have ascended nevertheless to heaven; and, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity: but a widow, who, from a wish to bear children, slights her deceased husband, brings disgrace on herself here below, and shall be excluded

9. An option must not be inferred from the injunction contrasted with the prohibition: for *Menn* enjoins continence to a widow.

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#### ANNOTATIONS.

9. *It is not right to deduce an option.*] For an option is inferred in the case of equal things: but here a censure is passed on those persons, who

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\* *Menn*, 9. 61.—68.

from the abode of her lord."\* Thus the legislator has forbidden the recourse of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

10. *Menu* explains the occasion on which she may be authorized to raise up issue to her husband.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue?] The same author explains it: "The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule: having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each proper season, until issue be had,"†

11. Interpretation of the text.

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely with an injunction of clarified butter and with restraint of voice &c. let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech and gesture, "once" at a time, until pregnancy ensue.

#### ANNOTATIONS.

authorize such a practice, and none upon those who forbid it. The injunction and the prohibition are consequently not equal; and therefore an option is not inferred.—*Subódhini*.

\* *Menu*, 5. 157.—161.

† *Menu*, 9. 69.—70.

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached ; like the inunction of clarified butter and so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

12. The intercourse of the widow with her husband's kinsman is a nominal marriage.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement, the issue may belong to both.

13. The issue belongs to the husband ; or, by special agreement, to both.

## SECTION XI.

### *Sons by Birth and by Adoption.*

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them.

1. Sons by birth and by adoption are described by *Vijayawaleya*.

## ANNOTATIONS.

12. *These espousals are nominal.*] The notion is this : as an inunction of clarified butter, and other observances, are prescribed as mere forms in approaching an authorized widow ; so these espousals are a mere part of that intercourse, and not a principal and substantive act, whence the parties might be supposed to become a married couple.—*Subódhini* and *Bálam-bhatta*.

For the woman cannot become a lawful wedded wife, being twice-married.—*Bálam-bhatta*.

13. *Therefore the offspring &c.*] The child is not a legitimate son (*aurasa*) of both parents ; but is (*cshétraja*) son of the soil or wife, and appertains to the husband or owner of the soil, provided no agreement were made to this effect : 'the offspring, here produced, shall belong to us both.' But, if such a stipulation exist, he is son of both.—*Subódhini* and *Bálam-bhatta*.

He is not legitimate son (*aurasa*) of the natural father, but similar to a legitimate son ; as will be made evident in the sequel.\*—*Bálam-bhatta*.

1. *Son of his maternal grandsire.*] In the numerous quotations of this passage, some read *sutah* "son," others *smritah* "called," and others again

\* Vide Sect. 11. § 4.

1st. The legitimate son.

2nd. Son of an appointed daughter

3rd. Son of the wife.

CXXVIII. "The legitimate son is procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter. The son of the wife is one begotten on a wife by a kinsman of her husband, or by some other relative."

4th. Son of hidden origin.

5th. Son of an unmarried woman.

CXXIX. "One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of an unmarried woman: he is considered as son of his maternal grandsire."

6th. Son of a twice-married woman.

CXXX. "A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage,] is called the son of a twice-married woman. He, whom his father or his mother give for adoption, shall be considered as a son given."

8th. Son bought.

9th. Son made.

10th. Son self-given

11th. Son of a pregnant bride.

CXXXI. "A son bought is one who was sold by his father and mother. A son made is one adopted by the man himself. One, who gives himself, is self-given. A child accepted, while yet in the womb, is one received with a bride."

12th. Son deserted.

CXXXII. "He, who is taken for adoption, having been forsaken by his parents, is a deserted son."\*

#### ANNOTATIONS.

*matah* "considered." The sense is not materially affected by these differences; as either term, being not expressed, must be understood.

\* *Yágyñwalkya*, 2, 128,—132.

2. The issue of the breast (*uras*) is a legitimate son (*aurasa*.) He is one born of a legal wife. A woman of equal tribe, espoused in lawful wedlock, is a legal wife ; and a son, begotten [by her husband\*] on her, is a true and legitimate son ; and is chief in rank.

2. Exposition of the text. Legitimate son.

3. The son of an appointed daughter (*putricá-putra*) is

3. Son of an

### ANNOTATIONS.

2. *A son, begotten on a woman of equal tribe.*] In fact it is not to be so understood. For it contradicts the author's own doctrine, since he includes the *Múrdhāvasiṭa* and others, born in the direct order of the tribes, among legitimate issue (§ 41.) They are not sons begotten on a woman of equal tribe : and, if issue by women of different tribes be not deemed legitimate, being considered as born of wives whom it was not lawful to marry, then it might follow, that other persons would take the heritage, although such sons existed. Hence the mention of a wife equal by tribe intends only the preferableness [of her or her offspring :] and the restriction, that she be a lawful wife, excludes the *eshétraja* or issue of the soil, and the rest.—*Veeramitródya*.

The son by a woman of equal tribe espoused in any of the irregular forms of marriage (*Asura* &c.) is a legitimate son : and the sons of a *Brahmana*, by wives espoused in the direct order of the classes (*Cshatriya* &c.), denominated the *Múrdhāvasiṭa*, the *Ambashl'ha*, and the *Párasava* or *Nisháda* ; and the sons of a *Cshatriya* by wives of the *Vaisya* or *Sudra* tribe, named the *Mahishya* and the *Uya* ; and the son of a *Vaisya* by a *Sudra* woman, called the *Carana* ; are all legitimate sons.—*Viswésvara bhatta* in the *Madana-Párijáta*.

By the term "lawful" is excluded a woman espoused by one to whom such marriage was not permitted : therefore the sons by women of superior tribe are not legitimate ; and, for this purpose, the word "lawful" has been introduced into the text (§ 1.) A lawful wife for a man of a regenerate tribe is a woman of a regenerate tribe ; and, for a *Sudra* man, a *Sudra* woman. For want of a wife of preferable description, one analogous is allowed. Consequently it is not indispensable, that the wife be of the preferable description. Even a *Sudra* woman may be the wife of a regenerate man ; and her issue is legitimate, as will be shown.—*Bálam-bhatta*.

3. *Equal to the legitimate son.*] The daughter appointed to be a son, and

\* *Bálam-bhatta* directs this to be supplied in conformity with passages of *Vishnu* (15. 2.) and *Menu*, 9. 166.)

a p p o i n t e d  
daughter, describ-  
ed by *Vasishṭha*;  
and daughter ap-  
pointed to be a  
son;

equal to him; that is, equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son; as described by *Vasishṭha*: "This damsel, who has no brother, I will give unto thee, decked with orna-

### ANNOTATIONS.

the son of an appointed daughter, are either of them equal to the legitimate son.—*Viśvēśwara* in the *Madana-Pārijāta*.

Since the son of an appointed daughter is son of legitimate female issue, therefore he is equal to a legitimate son: but he is not literally a legitimate son, being one remove distant.—*Viśvēśwara* in the *Subód'hini*.

[Or that term may signify &c.] It may signify a daughter who becomes by appointment a son; that is, who is put in place of a son. Although she be legitimate, yet being female, she is merely equal to a son.—*Veeramitródaya*.

"Equal to him," equal to the legitimate son, is the *putricá-putra* or daughter appointed to be a son: for, since all the terms of the definition of a legitimate son, excepting sex, are applicable to her, she is similar to him.—*Aparārca*.

The *Putricá-putra* is of four descriptions. The first is the daughter appointed to be a son. She is so by a stipulation to that effect. The next is her son. He obtains of course the name of 'son of an appointed daughter,' without any special compact. This distinction, however, occurs: he is not in place of a son, but in place of a son's son, and is a daughter's son. Accordingly he is described as a daughter's son in the text of *Saṇḍha* and *Lichita*: "An appointed daughter is like unto a son; as *Práchéta* has declared: her offspring is termed son of an appointed daughter: he offers funeral oblations to the maternal grandfathers and to the paternal grandsires. There is no difference between a son's son and a daughter's son in respect of benefits conferred." The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form "the child, who shall be born of her, shall be mine for the purpose of performing my obsequies."\* He appertains to his maternal grandfather as an adopted son. The fourth is a child born of a daughter who was given in marriage with a stipulation in this form: "The child, who shall be born of her, shall perform the obsequies of both." He belongs, as a son, both to his natural grandfather and to his maternal grandfather. But, in the case where she was in thought selected for an appointed daughter,† she is so without a compact, and merely by an act of the mind.—*Hemádri*.

\* *Menu*, 9. 127.

† *Menu*, 9. 136.

ments: the son, who may be born of her, shall be my son.”\* Or that term may signify a daughter becoming by special appointment a son. Still she is only similar to a legitimate son; for she derives more from the mother than from the father. Accordingly she is mentioned by *Vasishṭha* as a son, but as third in rank: “The appointed daughter is considered to be the third description of sons.”†

as also described  
by *Vasishṭha*.

4. The son of two fathers (*dwyāmushyāyana*)‡ is inferior to the natural father’s legitimate son, because he is produced in another’s soil.

4. Son of two  
fathers (Sect. 10.)

### ANNOTATIONS.

The son of the appointed daughter belongs in general only to the maternal grandfather: but, by special compact, to the natural father also. Thus *Nama* says: “Let the son of an appointed daughter perform the obsequies of his maternal ancestors exclusively: but, if he succeed to the property of both, let him perform the obsequies of both.” Accordingly this child also is denominated *dwyāmushyāyana* or son of two fathers.—*Bālam bhatta*.

“The appointed daughter is the third description of sons.”] “For she, who has no brother, reverts to her male ancestors and obtains a renewed filiation.”—*Vasishṭha*.||

The adopted daughter is counted by *Vasishṭha* as the third: not by *Yājñavalkya*.—*Subōd’hini*.

*Mitra Misra* reads second instead of third; against the authority of the institutes and of every compiler who has cited this passage.

4. Is inferior to the legitimate son.] He is similar to the son of the body.—*Bālam bhatta*.

Is not the son of two fathers the offspring of his natural father? Is he then a legitimate son? or one or other of the various descriptions of adoptive and secondary sons? Anticipating this question, the author says: “He is not different from him;” he is equal to a son of the body.—*Subōd’hini*.

The commentary last cited reads *arishṭa* ‘not different’ instead of *apacishṭa* ‘inferior.’—Both readings are noticed by *Bālam bhatta*.

\* *Vasishṭha*, 17. 16.

† *Vasishṭha*, 17. 14.

‡ Vide Sect. 10.

|| *Vasishṭha*, 17. 15.



5. Son of the wife.

5. A child, begotten by another person, namely by a kinsman, or by a brother of the husband, is a wife's son (*cshétraja*.)

6. Son of hidden origin.

6. The son of hidden origin (*gúd'haja*) is one secretly brought forth in the husband's house. By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to an instance where it is not ascertained who is the father, but it is certain that he must belong to the same tribe.

### ANNOTATIONS.

5. *A child, begotten by another person, . . . is a wife's son.*] There are two descriptions of *cshétraja* or wife's son; the first of them is son of both fathers (*dwipitrica*;) the other is adopted son of the wife's husband.—*Veeramitródhyā*.

A son begotten, under a formal authority, by a kinsman being of equal class, or by another relative, is a wife's son.—*Viśwésvara* in the *Madana-Párijāta*.

6. *He must belong to the same tribe.*] A child secretly conceived by a woman, in her husband's house, from a man of the same tribe, but concerning whom it is not certainly known who the individual was, is named a son of concealed origin. The ignorance as to the particular person must be the husband's, not the wife's: and the knowledge of his equality in tribe may be obtained through her; for surely she must know who he is. But, if she really do not know his tribe, having been secretly violated by a stranger [in a dark night,\*] then the child bears the name of a son of hidden origin, but is not so fit a son as the one before described.—*Viśwésvara* in the *Madana-Párijāta*.

In such circumstances, the child must be abandoned, say others.—*Bálam-bhatta*.

Since the natural father is not known, the child belongs to the same tribe with his mother. But, if there be a suspicion, that he was begotten by a man of inferior tribe, he is contemned.—*Váchespati Misra* in the *Srádd'hachintāmani*.

A son, who is born of the wife, and concerning whom it is not certainly known who is the natural father, is adoptive son of the mother's husband, and called son of concealed origin. Being son of the adoptive father's own wife

\* *Bálam-bhatta*,

7. A damsel's child (*cánína*) is the offspring of an unmarried woman by a man of equal class (as restricted in the preceding instance :) and he is son of his maternal grandfather, provided she be unmarried and abide in her father's house. But, if she be married, the child

7. Son of an unmarried woman ;

### ANNOTATIONS.

and begotten on her by another man, he is similar to the son of the wife, and therefore described after him.—*Aparārca*.

7. *By a man of equal class.*] As the son before described must be one begotten by a man of like tribe, so must this son also be the offspring of a man of equal class. "Damsel" does not here signify unmarried only : for, even with that import, the term is frequently used in the sense of 'unconnected with man.' But it signifies a woman with whom a regular marriage has not been consummated.—*Bālam-bhatta*.

The meaning of the passage of the *Mitācsharā* is this : "Unmarried" signifies one, whose nuptials have not been commenced ; "married," whose nuptials are begun. The affix here implies an act begun and not past. For a child begotten by a paramour alike in class, on a woman whose marriage is complete, is a son of concealed origin.—*Veeramitrōdaya*.

The child, born of an unmarried woman, is denominated son of a damsel ; and is considered by *Menu* and the rest as son of his maternal grandfather. Being produced in a soil which in some measure appertains to him, namely his daughter, the child is similar to the son of concealed origin, and is therefore mentioned by *Yājñavalkya*, next after him.—*Aparārca*.

If the maternal grandfather have no male issue, then the damsel's son is deemed his son ; if he have issue, then the child is son of the husband. If both be childless, he is adoptive son of both.—*Pārijāta* cited in the *Retnā-cora* and *Sudd'hi-vivēca*.

If either of them be destitute of male issue, the child is his son ; but, if both be so, the child is son of both.—*Bālam-bhatta*.

*So Menu intimates.*] The meaning of the passage cited from *Menu* is as follows : a young woman, betrothed, but whose nuptials have not been completed ; and who is consequently a maiden, since she is not yet become the wife of her intended husband : a son (we say) borne by such a damsel is denominated a damsel's child, and is considered as son of the bridegroom ; that is, of the person by whom she is espoused. Accordingly the condition "in the house of her father" is pertinent as an explanatory phrase : for, after marriage, she inhabits the house of her husband.—*Veeramitrōdaya*.

described by *Menu*, becomes son of her husband. So *Menu* intimates ; " A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband, and denominated a damsel's son, as being born of an unmarried woman."\*

8. Son of a twice-married woman.

8. The son of a woman twice-married is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

### ANNOTATIONS.

8. *Whether &c.*] Whether the marriage had or had not been consummated by the first husband, and whether she have been forsaken by her husband in his life-time or be a widow. Such is the meaning. Accordingly *Vishnu* so declares : " He, whom a woman, either forsaken by her husband, or a widow, and again becoming a wife by her own choice, conceived [by a second husband,] is called the son of a woman twice-married."† The child is son of the natural father : for the first husband's right to the woman is annulled by his death or relinquishment ; and she has not been authorized to raise up issue to him ; and she takes a second husband solely by her own choice.—*Bálam bhatta*.

There are two descriptions of twice-married women : the first is a woman whose marriage has not been consummated, but only contracted, and who is espoused by another man. The other is a woman who has been blemished by intercourse with a man, before marriage. The offspring of such a woman is (*pauner-bhava*) son of a twice-married woman. Accordingly it is so expressed in the text.—*Vceramitródaya*.

" A woman, whose marriage had not been consummated, and who is again espoused, is a twice married woman. So is she, who had previous intercourse with another man, though she be not actually married a second time."—*Vishnu* ‡

A child begotten " on a woman, whose [first] marriage had not been consummated ;" on the wife of an impotent man or the like, whether she have become a widow or not ; or on his own wife " who had been deflowered ;" who had been enjoyed by strangers, and who is taken back, and again espoused ; the child (we say) begotten on such a woman, is called 'son by a

\* *Menu*, 9. 172.

† *Menu*, 9. 175. Erroneously cited as a passage of *Vishnu*.

‡ *Vishnu*, 15. 8.--9.

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or incapable though present,\*] or [without his assent†] after her husband's de-

9. Son given described by *Menu*.

### ANNOTATIONS.

woman twice married.' The twice-married woman has been described in the first book [of *Yājñyavalkya's* institutes.]—*Aparāra*.

"Whether a virgin or deflowered, she who is again espoused with solemn rites, is a twice-married woman: but she, who deserts her husband and through lust cohabits with another man of the same tribe, is a self-guided woman."—*Yājñyavalkya*.‡

There are two descriptions of women termed *anyapūrvā* || or previously connected with another: namely the *pūnerbhā* or woman twice-married, and the *swairinī* or self-guided and unchaste woman. The twice-married woman also is of two descriptions; according as she has or has not been deflowered. She, who is not a virgin, is blenished by her intercourse with man before the nuptial ceremony: she, who is yet a virgin, is blenished by the repetition of the ceremony of marriage. But one, who deserts the husband of her youth, and through desire cohabits with another man of the same tribe, is a self-guided woman (*swairinī*)—*Mitācsharā*.§

A woman, who, having been married, whether she be yet a virgin or not, is again espoused in due form by her original husband or by another, is a twice-married woman. She is so described by *Menu*: "If she be still a virgin, or if she left her original husband and return to him, she may again perform the marriage ceremony with her second [or, in the latter case, her original] husband:"¶ and by *Vasishṭha*: "She, who, having deserted the husband to whom she was married in her youth, and having cohabited with others, returns to his family, is a twice married woman. Or she, who deserts a husband impotent, degraded, or insane, and marries another husband, or does so after the death of the first, is a twice-married woman."\*\* The repetition of the nuptial ceremony constitutes her a twice-married woman. But she, who leaves her husband and through desire cohabits, without marriage, with a man of the same tribe, is a self-guided woman.—*Aparāra*.

9. He, who is given by his mother with her husband's consent ] *Vasishṭha* says "Let not a woman either give or accept a son, unless with the assent of her husband."†† He had before said "Man, produced from virile seed and

\* *Bālam-bhatta*.

† *Bālam-bhatta*.

‡ *Yājñyavalkya*, 1. 68.

|| Same with *parapūrvā*. See *Menu*, 5. 163.

§ On *Yājñyavalkya*, 1. 63.

¶ *Menu*, 9. 176.

\*\* *Vasishṭha*, 17. 18.—19.

†† *Vasishṭha*, 15. 4.

cease, or who is given by his father, or by both, being of the same class with the person to whom he is given, becomes his given son (*dattaca*.) So *Menu* declares: "He is called a son

### ANNOTATIONS.

uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore both his father and his mother have power to give, to sell, or to abandon their son.\*

Concerning the mother's authority to give away her son, when she is a widow, see a subsequent note. In regard to a widow's power of adopting a son, there is much diversity of opinions. *Váchespati Misra*, who is followed by the *Mait'hila* school, maintains that neither a woman, nor a *Sudra*, can adopt a *dattaca* or given son; because the prescribed ceremony (§ 13.) includes a sacrifice, which they are incapable of performing. This difficulty may be obviated by admitting a substitute for the performance of that ceremony: and accordingly adoption by a woman, under an authority from her husband, is allowed by writers of the other schools of law. *Nanda Pandita*, however, in his treatise on adoption, restricts this to the case of a woman whose husband is living, since a widow cannot, he observes, have her husband's sanction to the acceptance of a son. On the other hand, *Bálan-bhatta* contends, that a woman's right of adopting, as well as of giving, a son, is common to the widow and to the wife. This likewise is the opinion of the author of the *Tyaraháramayuc'ha*: but, while he admits, that a widow may adopt a son without her husband's previous authority, he requires, that she should have the express sanction of his kindred. Writers of the *Gaura* school, on the contrary, insist on a formal permission from the husband declared in his lifetime.

*Being of the same class with the person to whom he is given.*] Or being given to a person of the same class. The two readings, (*savarṇāya* in the dative, or *savarṇyaḥ* in the nominative,) both noticed by the commentator *Bálan-bhatta*, give the same sense.

The adopted son must be of the same tribe with the giver or natural parent as well as with the adoptive parent, according to the remark of *Aparārca* cited with approbation by *Nanda Pandita* in his treatise on adoption.

*Becomes his given son.*] The son given (*dattaca* or *datṭrima*) is of two sorts; 1st simple, 2d son of two fathers (*dvayāmushyáyana*.) The first is one bestowed without any special compact; the last is one given under an agreement to this effect "he shall belong to us both."—*Vyavaháramayuc'ha*.

\* *Vasishṭ'ha*, 15. 1.—2.

given (*dattrima*), whom his father or mother affectionately gives as a son, being alike [by class,] and in a time of distress; confirming the gift with water.”\*

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver [not the taker.†]

10 Distress is requisite to justify a parent in giving away his offspring.

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“Whom his father or mother gives.”] *Méd'hátihī* reads and interprets “whom his father and mother give;” (inserting the conjunctive particle *cha* instead of the disjunctive *vá*.) *Bālam-bhatta* condemns that reading; and infers from the disjunctive particle and dual number in the text, that three cases are intended; viz. 1st. The mother may give her son for adoption with her husband's consent, if he be absent or incapable; and without it, if he be dead or the distress be urgent. 2d. The father may give away his son without his wife's consent, if she be dead, or insane, or otherwise incapable; but, with her consent, if she reside in her own father's house. 3d. The father and mother may conjointly give away their son, if they be living together.

“Whom his father or mother affectionately gives.”] Amicably: not from avarice or intimidation. In the *Veeramitródaya*, the word is expressly stated to be used adverbially: but *Bālam-bhatta* considers it as an epithet of the son to be adopted, and as implying, that the adoption is not to be made against his will or without his free consent.

“Being alike.”] This is interpreted by *Méd'hátihī* as signifying ‘alike, not by tribe, but by qualities suitable to the family: accordingly a *Cshatriya*, or a person of any other inferior class, may be the given son (*datṭaca*) of a *Brahmana*.’ *Bālam-bhatta* and the author of the *Mayuṭṭha* censure this doctrine: since every other authority concurs in restricting adoption to the instance of a person of the same tribe.

10. By specifying distress.] “Distress” is explained in the *Pracāsa* cited by *Chandésvara*, ‘inability [of the natural father] to maintain his offspring.’ *Nanda Pandita*, in his treatise on adoption, expounds it as intending the necessity for adoption arising from the want of issue. But *Bālam-bhatta* rejects this, and supports the other interpretation; explaining the term as signifying ‘famine or other calamity.’

\* *Menu*, 9. 168.

† *Subód'hini* and *Bālam-bhatta*.

11. The person must not be an only son : so *Vasishṭha*.

11. So an only son must not be given (nor accepted.\*) For *Vasishṭha* ordains "Let no man give or accept an only son."†

12. Nor the eldest son : according to *Menn*.

12. Nor, though a numerous progeny exist, should an eldest son be given : for he chiefly fulfils the office of a son ; as is shown by the following text. "By the eldest son, as soon as born, a man becomes the father of male issue."‡

13. The form to be observed in this adoption, is described by *Vasishṭha*.

13. The mode of accepting a son for adoption is propounded by *Vasishṭha* : "A person, being about to adopt a son, should take an unremote kinsman or the near relation of a

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*This prohibition regards the giver.*] If he give away his son, when in no distress the blame attaches to him, not to the taker.—*Bālam-bhatta*.

11. *So an only son should not be given.*] Nor should such a son be accepted. The blame attaches both to the giver and to the taker, if they do so.—*Bālam-bhatta*.

"*Let no man give or accept an only son.*" ] "For he is [destined] to continue the line of his ancestors." Such is the sequel of *Vasishṭha's* text.—*Bālam-bhatta*.

13. *The mode of accepting a son . . . is propounded by Vasishṭha.*] *Raghunandana*, in the *Udraka-tatva*, has quoted a passage from the *Cālicā-purāna*, which, with the text of *Vasishṭha*,|| constitutes the groundwork of the law of adoption, as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law ; and the authenticity of the passage itself is contested by some, and particularly by the author of the *Vyavahāramayuc'ha*, who observes truly, that it is wanting in many copies of the *Cālicā-purāna*. Others, allowing the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not of a stranger, more advanced both in age and in progress of initiation. The following version of the passage

\* *Bālam-bhatta*.

† *Vasishṭha*, 15. 3.

‡ *Menn*, 9. 106.

|| *Vasishṭha*, 15. 1.—7. See preceding quotations.

kinsman, having convened his kindred and announced his intention to the king, and having offered a burnt offering with recitation of the holy words, in the middle of his dwelling.”\*

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conforms with the interpretation of it given by *Nanda Pandita* in the *Dattaca-mīmāṃsā*. “Sons given and the rest, though sprung from the seed of another, yet being duly initiated [by the adopter] under his own family name, become sons [of the adoptive parent.] A son, having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When indeed the ceremony of tonsure and other rites of initiation are performed [by the adopter] under his own family name, then only can sons given and the rest be considered, as issue : else they are termed slaves. After their fifth year, O King, sons are not to be adopted. [But,] having taken a boy five years old, the adopter should first perform the sacrifice for male issue.”†

The *Putréshti* or sacrifice for male issue, mentioned at the close of this passage, is a ceremony performed according to the instructions contained in the following text of the *Vēda* : “He who is desirous of issue, should offer to fire parent of male offspring, an oblation of kneaded rice roasted upon eight potsherds ; and to *Indra* father of male offspring, a similar oblation of rice roasted on eleven potsherds : fire grants him progeny ; *Indra* renders it old.”

“An unremote kinsman or the near relation of a kinsman.”] This very obscure passage, which is variously read and interpreted, is here translated according to the elaborate gloss of *Nanda Pandita* in his treatise entitled *Dattaca-mīmāṃsā*. Yet the same writer in his commentary on *Vishnu* (15. 19,) citing this passage, gives the preference to another reading (*adūra-bānd’havam asannicrishtam ēva*), which he expounds ‘one whose whole kindred dwell in a near country, and one not connected by affinity.’ Which of these readings he has adopted in his commentary on the *Mitācsharā*, is not ascertained. From a remark in the text (§ 14,) the author himself, *Vijñānēsvara*, appears to have read and understood it differently : “Should take, in the presence of his kin, one whose kinsmen are not remote.” For copies of the *Mitācsharā* exhibit the reading, *adūra-bānd’havam bandhu sannicrishtu ēva*. But the commentator *Bālam-bhatta* seems to have read, as the *Dattaca-mīmāṃsā*, *bandhu-sannicrishtam* (in the accusative instead of the locative ;)

\* *Vasishṭha*, 15. 5.

† *Cālicā-purāna*, c. antepenult.



14. Explan-  
ation of the text.

14. An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same  
rules applicable to  
adoption by pur-  
chase &c.

15. The same [ceremonial of adoption\*] should be ex-  
tended to the case of sons bought, self-given, and made [as  
well as that of a son deserted :†] for parity of reasoning  
requires it.

16. Son bought;

16. The son bought (*cr̥ṭa*) is one who was sold by his

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though he explain the terms a little differently and transpose them : ‘should take a kinsman nearly related (*band’hu-sannicrishtam*,) as a brother’s son or the like ; but, on failure of such, one whose kinsmen are not remote (*adūra bānd’havam*) ; that is, any other person, whose father and the rest of his relations abide in a near country and whose family and character are ‘consequently known.’ The authors of the *Calpataru* and *Retnácara* read, like the scholiast of *Vishnu*, *aduré band’havam asannicrishtam éva*, and thus interpret the passage ‘should take one whose kinsmen, namely his mater-  
nal uncle and the rest, are near, [and whose name and tribe, with other particulars, can therefore be ascertained ; or, for want of such kindred,‡] even one whose good or bad qualities are not known, [or one whose kinsmen are not at hand ; for his name and family may be ascertained by other ‘sufficient proof.’]]

“Announced his intention to the king.”] *Rajah* or king, usually signifying the sovereign, is here restricted, according to the remark of *Nanda Pandita*, to the chief of the town or village.

“In the middle of his dwelling.”] The sequel of *Vasisht’ha*’s text is as follows. “But, if doubt arise, let him set apart [without initiation and with a bare maintenance] like a *Sudra*, one whose kindred are remote. For it is declared [in the *Véda*] *Many are saved by one.*”§

15. *The same ceremonial.*] Excepting the sacrifice or burnt offering. How-  
ever, even that is to be performed at the adoption of a son self-given.—*Bálam-  
bhatta*.

16. *As for the text of Menu &c.*] *Sūlapáni*, on the other hand, expounds

\* *Subódhini*.

† *Viváda-Retnácara*.

† *Bálam-bhatta*.

‡ *Viváda-Retnácara*.

§ *Vasisht’ha*, 15. 6.—7.

father and mother, or by either of them : excepting as before an only son or an eldest one, and supposing distress and equality of tribe. As for the text of *Menu*, ("He is called a son bought, whom a man, for the sake of having issue, purchases from his father and mother : whether the child be equal or unequal to him."\*) it must be interpreted 'whether like or unlike in qualities;' not in class : for the author concludes by saying "This law is propounded by me, in regard to sons equal by class."†

17. The son made (*critrima*) is one adopted by the person himself, who is desirous of male issue ; being enticed by the show of money and land, and being an orphan without father or mother : for, if they be living, he is subject to their control.

17. Son made.

#### ANNOTATIONS.

*Yājñavalkya* by *Menu*, and admits the inequality of tribe. 'A child, sold by his father and mother, and received from adoption, is a son bought. He may be of dissimilar tribe : for the text [of *Menu*] expresses "equal or unequal."‡ *Chandésvara* quotes the following discordant interpretations : "Equal ;" belonging to the same tribe ; or, if that be not practicable, one unequal, or not appertaining to the same tribe. So the *Párijáta*.|| But the author of the *Pracísa* observes, Though the text express "unequal," yet a child of a superior tribe must not be taken as a son, by a man of inferior tribe ; nor one of inferior class, by a man of a higher tribe. And the words "equal or unequal," as interpreted by *Méu'hatil'hi*, are relative 'to similarity in respect of qualities.'§

17. *The son made.*] One bereft of father and mother and belonging to the same tribe with the adopter, and by him adopted, being enticed to acquiesce by the show of wealth, is a son made by adoption.—*Visuésvara* in the *Madana-Párijáta*.

\* *Menu*, 9. 174.

† *Yājñavalkya*, 2. 134, Vide § 37.

‡ *Dipacalici* on *Yājñavalkya*.

|| Not the *Madana-Párijáta*, which gives the contrary interpretation.

§ *Vicája-Rehácara*.

18. Son self-given.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them [without cause,\*] presents himself, saying "Let me become thy son."

19. Son of a pregnant bride.

19. The son, received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

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The form, to be observed, is this. At an auspicious time, the adopter of a son, having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some acceptable chattel, says "Be my son." He replies "I am become thy son." The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite; and a set form of speech is not essential.—*Rudrad'hara* in the *Sudd'hi-vivéca*.

18. *The son self-given.*] He, who, unsolicited, gives himself saying "let me become thy son," is called a son self-given (*swayandatta*.—*Aparāra*.

Here also it is requisite, that he belong to the same tribe with his adoptive father.—*Viśvēswara* in the *Madana-Párijáta*.

"He who has lost his parents, or been abandoned by them without cause, and offers himself to a man as his son, is called a son self-given."—*Menu*.†

Being abandoned by his father and mother without any sufficient cause, such as degradation from class or the like: but merely from inability to maintain him during a dearth, or for a similar reason.—*Veeramitródaya*.

19. *The son received with a bride.*] If a woman be married while pregnant, the child born of that pregnancy is a son received with a bride (*sahód'ha*) provided the child were begotten by a man of equal class.—*Viśvēswara* in the *Madana-Párijáta*.

He is distinguished from the son of an unmarried damsel, because the conception preceded the betrothing of the mother; and from the son of concealed origin, because the natural father is known. Then what difference is there for the son of the unmarried damsel was conceived before troth plighted. True: yet there is a great difference, since one is born before marriage, and the other after marriage. This son received with a bride is son of him who takes the hand of the pregnant woman in marriage: for the maternal grandfather's right is divested by his giving away the child with the mother.—*Nanda Pandita* in the *Taijyanti* on *Vishnu*.

\* *Dálam-bhatta*,

† *Menu*, 9. 178.

20. A son deserted (*apavidh'ha*) is one, who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.

20. Son deserted.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage :

21. Order in which these different sons succeed to an inheritance : as declared by *Yājñavalkya*.

CXXXIIa. " Among these, the next in order is " heir, and presents funeral oblations on failure of the " preceding."\*

#### ANNOTATIONS.

Since the bridegroom is specified as the adoptive father, the child does not belong to his natural father. Although the religious ceremony of marriage do not take place in the case of a pregnant woman, since a text of law restricts the prayers of the marriage ceremony to the nuptials of virgins, and forbids their use in the instance of women who are not virgins, as a practice which has become obsolete among mankind ; and it would be inconsistent with a passage of the *Véda* [used at the nuptial ceremony as a prayer] expressing " the virgin worships the generous sun in the form of fire ;" nevertheless the term " marry" [in the text of *Menu*] intends a religious ceremony different from that, but consisting of burnt offerings, and so forth, according to the remark of the *Ratnācara* and the rest.—*Vāchespati Misra* in the *Srāddha-chintāmani*.

20. *Discarded.*] Abandoned : not for any fault, but through inability to maintain him, or because he was born under the influence of the stars of the scorpion's tail,‡ or for any similar reason.—*Bālam-bhatta*.

Since that, of which there is no owner, is appropriated by seizure or occupation, the child becomes son of him, by whom he is taken.—*Nanda Pandita* in the *Vaijayanṭi* on *Tishnu*, 15. 24.

\* *Yājñavalkya*, 2. 132a.

+ *Menu*, 9. 173.

‡ The birth of a son, while the moon is near the stars of *Māla* (the scorpion's tail), is dangerous to the father's life, according to *Indian* astrology ; and, on this account, a son born under that influence is exposed or abandoned, if natural affection and humanity do not overcome superstition and credulity.

22. Interpretation of the text.

22. Of these twelve sons above-mentioned, on failure of the first respectively, the next in order, as enumerated, must be considered to be the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. An appointed daughter shares with a legitimate son : according to a passage of *Menu*.

23. If there be a legitimate son and an appointed daughter, *Menu* propounds an exception to the seeming right of the legitimate son to take the whole estate : " A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal : since there is no right of primogeniture for the woman."\*

#### ANNOTATIONS.

22. *Of these twelve sons.*] The various modes of adoption, added to the legitimate son by birth, raise the number of descriptions of sons to twelve, according to most authorities. That number is expressly affirmed by *Menu*,† *Nāreda*,‡ *Vasishṭha*,§ *Vishnu*,§ &c. A passage is however quoted from *Dēvala*, asserting the number of fifteen ("The descriptions of sons are ten and five,") and *Vrihaspati* is cited as alleging the authority of *Menu* for thirteen : "Of the thirteen sons, who have been enumerated by *Menu* in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is declared to be a substitute for liquid butter, so are eleven sons by adoption substituted for the legitimate son and appointed daughter." *Nanda Pandita*, in his commentary on *Vishnu*, observes, that 'the number of thirteen specified by *Vrihaspati*, and that of fifteen by *Dēvala*, intend 'sub-divisions of the species, not distinct kinds : consequently there is no contradiction ; for those sub-divisions are also included in the enumeration of 'twelve.' It appears, however, from a comparison of texts specifying the various descriptions of sons, that the exact number (as indeed is acknowledged by numerous commentators and compilers) is thirteen ; including the son by a *Sudra* woman.—Vide § 30.

23. *If there be a son and an appointed daughter.*] So this passage is interpreted by the commentators *Viśvēśwara* and *Bālam-ḥhatta*. The original is, however, ambiguous and might be explained 'if there be a legitimate son

\* *Menu*, 9. 134. † *Menu*, 9. 158. ‡ *Nāreda*, 13. 44. § *Vasishṭha*, 17. 11.  
§ *Vishnu*, 15. 1.

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by *Vasishṭha*: "When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part,"\* Here the mention of a son given is intended for an indication of others also, as the son bought, son made by adoption, and [son self-given† and] the rest: for they are equally adopted as sons.

24. Others have a quarter of a share, as directed by *Vasishṭha*.

25. Accordingly *Cātyāyana* says, "If a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same tribe; but, if they be of a different class, they are entitled to food and raiment only."

25. *Cātyāyana* allots to them the same portion; provided they be of equal class; else, food and raiment only.

26. "Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely the sons bought, made, self-given and discarded,‡] share a fourth part, if there be a true legitimate son: but those, who belong to a different class, as the damsel's son, the son of concealed

26. The son of the wife, and sons given, bought, made, self-given and discarded, are of equal class; the damsel's son, the son of hidden ori-

### ANNOTATIONS.

and a son of an appointed daughter.' *Bāḥu-bhalla* remarks, that this can only happen where a legitimate son is born after the appointment of a daughter.

24. *So the allotment of a quarter share.*] As the appointed daughter participates where there is a legitimate son; so do other sons likewise partake.—*Subōd'hini*.

*The mention of a son given.*] This is according to the reading of the text as here cited and in the *Veeramitrōdaya* and *Camalācāra's Vivāda-Tāndava*. But, in the *Calpataru*, *Retnācāra*, *Chintāmani* &c. that restrictive term is wanting: *Sa chaturt'ha-bhāga-bhāgi syat*, instead of *Chaturt'ha bhāga bhāgi syād dattacah*.

25. *Sharers of a fourth part.*] This reading is followed in the *Mad'ira-Pārijāta*, *Veeramitrōdaya*, &c. But the *Calpataru*, *Retnācāra* and other compilations read 'a third part.'—Vide *Jimāta-rāhana*, C. 10. §§ 13.

\* *Vasishṭha*, 15. 8.

† *Bāḥu-bhalla*.

‡ *Subōd'hini* and *Pārijāta*.

gin, son of a pregnant bride, and son of a twice-married woman, are of inferior rank.

origin, the son of a pregnant bride, and the son by a twice-married woman, do not take a fourth part, if there be a legitimate son: but they are entitled to food and raiment only.

27. A passage of *Vishnu*, concerning these exceptionable sons, denies their participation.

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate." This passage of *Vishnu*\* merely denies the right of those sons to a quarter share, if there be legitimate issue: but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited (§ 21.)

28. *Menu* allots to adopted sons, a mere maintenance: supposing their insubordination towards the legitimate son.

28. "The legitimate son is the sole heir of his father's estate; but, for the sake of innocence, he should give a maintenance to the rest."† This text of *Menu* must be considered as applicable to a case, where the adopted sons (namely the son given and the rest) are disobedient to the legitimate son and devoid of good qualities.

29. He assigns a fifth or a sixth part to the son

29. Here a special rule [different from *Cātyāyana's*‡] is propounded by the same author (*Menu*) respecting the son

#### ANNOTATIONS.

28. *Applicable to a case where adopted sons (namely the son given &c) are disobedient.*] It also relates to the damsel's son and the rest: for they are declared entitled to food and raiment only, if there be legitimate issue; and that must be supposed to be founded on the same authority with this text: but *Menu* has himself propounded a fifth or a sixth part for the son of the wife, if there be legitimate issue. ||—*Veeramitrōdaya*.

\* It is not found in the institutes of *Vishnu*; but is cited from that author in the *Madana-Pārijāta* and *Veeramitrōdaya*, as in this place.

† *Menu*, 9. 163.

‡ *Bālam bhatta*.

|| Vide § 29.

of the wife: "Let the legitimate son, when dividing the paternal heritage give a sixth part, or a fifth, of the patrimony to the son of the wife."\* The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

30. *Menu*, having premised two sets of six sons, declares the first six to be heirs and kinsmen; and the last to be not heirs but kinsmen: "The true legitimate issue, the son of a wife, a son given, and one made by adoption, a son of concealed origin, and one rejected [by his parents,] are the six heirs and kinsmen. The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a *Sudra* woman, are six not heirs but kinsmen."†

30. Two classes of sons are distinguished by *Menu*: one inheriting from collaterals, and the other not.

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen (*sapindas* and *samánódacas*) if there be no nearer heir; but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

31. Explanation of the text.

### ANNOTATIONS.

31. *The first six may take the heritage of collateral kinsmen: . . . not so the last six.* The sense of the two passages is, that, if there be no nearer collateral kinsman, the first six inherit the property; but not the six last.—*Subódhini*.

However, consanguinity &c.] *Médhātīhi* interprets the text of *Menu* as signifying that 'the last six are neither heirs nor kinsmen.' But that interpretation is censured by *Cullucá bhattacha*; and is supposed by the commentator on the *Mitácshará* to be here purposely confuted.

\* *Menu*, 9. 164.

† *Menu*, 9. 159.—160.



32. Confirmed  
by a passage of  
*Menu.*

32. It must be so expounded ; for the mention of a given son in the following passage is intended for any adopted or succedaneous son. " A given son must never claim the family and estate of his natural father. The funeral oblation follows the family and estate : but of him, who has given away his son, the obsequies fail."\*

33. Sons of all

33. All, without exception, have a right of inheriting

### ANNOTATIONS.

32. *The mention of given son is intended for any adopted son.]* The meaning, as here expressed, is this : the mention of a son given is in this place intended to denote any succedaneous son. Consequently, since it appears from the text that adopted sons have a right of inheritance ; but, according to the opponent's opinion, it appears from another passage, that they have not a right of succession ; it might be concluded from such a contradiction, that the precepts have no authority : therefore, lest the text become futile, the interpretation, proposed by us, is to be preferred.—*Subód'hini.*

*Of him, who has given away his son, the obsequies fail.]* This must be understood of the case where the giver has other male issue.—*Subód'hini.*

But, if he have not, then even that son is competent to inherit his estate and to perform his obsequies ; like the son of two fathers (Sect. 10 § 1) : for a passage of *Sátatapa* directs " Let the given son present oblations to his adoptive parent and to his natural father, on the anniversary of decease, and at *Gayá*, and on other occasions ; not, however, if there be other male issue." This indeed can only occur where the natural father is bereft of issue after giving away his son : since, at the time of the gift, it is forbidden to part with an only son (§ 11.) In this manner is to be understood the circumstance of a given son, as son of two fathers, conferring benefits on both.—*Bálam-bhatta.*

If either the natural parent or the adoptive father have no other male issue, the *Dreyámushyáyana* or son of two fathers shall present the funeral oblation to him and shall take his estate : but not so, if there be male issue. If both have legitimate sons, he offers an oblation to neither, but takes the quarter of a share allotted to a legitimate son of his adoptive father.—*Vyarahára-mayuc'ha.*

33. *The word " heir" is frequently used.]* An instance is cited in the text. It is part of a passage, of which the sequel has not been found. The words are " let him compel the heirs to pay."

\* *Menu*, 9, 142.

their father's estate, for want of a preferable son : since a subsequent passage (" Not brothers, nor parents, but sons, are heirs to the estate of the father,"\*) purposely affirms the succession of all subsidiary sons other than the true legitimate issue ; and the right of the legitimate son is propounded by a separate text (" The legitimate son is the sole heir of his father's estate ;"†) and the word " heir" (*dāyada*) is frequently used to signify any successor other than a son.

descriptions may inherit from the father.

34. The variation which occurs in the institutes of *Vasishtha* and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

34. Differences in the order of enumeration reconciled : as found in *Vasishtha* &c.

#### ANNOTATIONS.

34. *The variation, which occurs in Vasishtha &c.] Menu*, declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue,‡ and proceeds to define the remaining ten succedaneous sons.¶ But *Vasishtha* states the appointed daughter as third in rank ;§ which is a disagreement in the order of enumeration. The same must be understood of other institutes of law ;¶ which are here omitted for fear of prolixity. How then is the succession of the next in order on failure of the preceding reconcileable ? The author proposes this difficulty with its solution. His notion of the mode of reconciling it is this : *Menu*, declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore to be a loose enumeration, and not one arranged with precision. Accordingly *Menu*, in saying " Let the inferior in order take the heritage,"\*\*\* does not limit this very order, but intends one different in some respects : and the difference is relative to good and bad qualities. The same method must be used with the variations in other codes. Moreover, what is ordained by *Yājñawalkya* is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife,

\* *Menu*, 9. 185.

† Vide § 28.

‡ *Menu*, 9. 165.

¶ *Menu*, 9. 166.—178. § *Vasishtha*, 17. 14.

§ As *Vishnu* 15, 2.—37. *Nārada*, 13 44.—45. *Dvala*, &c.

\*\*\* *Menu*, 9. 184.

35. And in *Gautama*.

35. But the assignment of the tenth place to the son of an appointed daughter, in *Gautama's* text, is relative to one differing in tribe.

36. A nephew should be adopted, rather than a stranger or a distant relation.

36. The following passage of *Menu*, "If, among several brothers of the whole blood, one have a son born, *Menu* pronounces them all fathers of male issue by means of that son ;"\* is intended to forbid the adoption of others, if a brother's son can possibly be adopted. It is not intended to declare him son of his uncle : for that is inconsistent with the subsequent text ; "brothers likewise and their sons, gentiles, cognates &c."†

#### ANNOTATIONS.

a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father or from a soil appertaining to him, have the preference before the son given and the rest. The son received with a bride, being produced from soil which the adoptive father accepts for his own, is placed in the second set by the authority of the text [or because the mother did not appertain to the adoptive father at the time when the child was begotten.‡] The whole is therefore unexceptionable.—*Subôd'hini*.

36. *That is inconsistent with the subsequent text.*] It is incompatible with a passage of *Yājnyawalkya* declaratory of the nephew's right of succession after brothers. For, if he be deemed a son, because all the brethren are pronounced fathers of male issue by means of the son of a brother, he ought to inherit before all other heirs, such as the father and the rest, [who are in that passage preferred to him.]—*Subôd'hini*.

The principle of giving a preference to the nephew, as the nearest kinsman, in the selection of a person to be adopted, is carried much further by *Nanda Pandita* in the *Dattaca-mīmāṃsā* : and, according to the doctrine there laid down, the choice should fall on the next nearest relation, if there be no brother's son ; and on a distant relation, in default of near kindred : but on a stranger, only upon failure of all kin.—See § 13.

\* *Menu*, 9. 182. † *Yājnyawalkya*, 2. 136. Vide infra. C. 2. Sect 1. § 1.

‡ *Bālam-bhatta*.

37. The author next adds a restrictive clause by way of conclusion to what had been stated :

37. The foregoing rules of filiation are restricted to persons of the same tribe.

CXXXIII. "This law is propounded by me in regard to sons equal by class."\*

38. This maxim is applicable to sons alike by class, not to such as differ in rank.

38. Not being applicable when the rank differs.

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters: for they are not within the definition of tribe and class.

39. Some adoptive sons are however included, though not within the definition of tribe.

40. Since issue, procreated in the direct order of the tribes, as the *Mār'd'hāvasiata* and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

40. Legitimate issue, of a mixed class, inherits before adoptive sons.

41. But the son by a *Sūdra* wife, though legitimate, does not take the whole estate, even on failure of other issue.

41. But the *Sūdra's* son is restricted to a tenth,

#### ANNOTATIONS.

39. *They are not within the definition of tribe.* For *Yājñavalkya*, having described the origin and distinctions of the tribes and classes, [viz. the *Mār'd'hāvasiata*, *Ambāśit'ha*, *Nishāda*, *Māhishya*, *Ugra* and *Corana*.] adds "This rule concerns the children of women lawfully married."† — *Veeramitōdaya*.

Since these (viz. the damsel's son and the rest) are bastards; born either in fornication or adultery, their exclusion from class, tribe, &c. has been ordained in the first book on religious observances. — *Subōd'hini*.

41. *No more than a tenth part* ] Is not this wrong? for it has been declared, that the *Sūdra's* son shall take a share in a distribution among sons of

\* *Yājñavalkya*, 2. 133.

† *Yājñavalkya*, 1. 93.

by a passage of *Menu*.

Thus *Menu* says, "But, whether the man have sons, or have no sons, [by his wives of other classes,] no more than a tenth part must be given to the son of the *Sudra*."\*

42. Interpretation of the text.

42. "Whether he have sons," whether he have male issue of a regenerate tribe; "or have no sons," or have no issue of such a tribe; in either case, upon his demise, the son of the wife or other [adoptive son,] or any other kinsman [and heir,] shall give to the *Sudra's* son, no more than a tenth part of the father's estate.

43. The son of the *Cshatriya* or *Vaisya* wife inherits in default of issue by a *Brahmani*.

43. Hence it appears, that the son of a *Cshatriya* or *Vaisya* wife takes the whole of the property on failure of issue by women of equal class.

## SECTION XII.

### *Rights of a Son by a Female Slave, in the case of a Sudra's Estate.*

1. In the instance of a *Sudra's* property, his son by a female slave inherits or participates;

1. The author next delivers a special rule concerning the partition of a *Sudra's* goods.

## ANNOTATIONS.

various tribes (Sect. 8. § 1;) but it is here directed, that he shall have a tenth part. No: for the four shares of the *Brahmani's* son, with three for the *Cshatriya's* child, make seven; and, with two for the *Vaisya's* offspring, make nine: adding that to one for the *Sudra's* son, the sum is ten. Thus there is no contradiction; for, in that instance also, his participation for a tenth part is ordained: and the whole is unexceptionable.—*Subód'hini*.

43. Hence it appears.] It so appears from the text of *Menu* above cited (§ 41)—*Bálam bhatta*.

1. "In default of daughter's sons."] Some interpret this 'on failure of daughters, and in default of their sons.'—*Bálam bhatta*.

\* *Menu*, 9. 154.

CXXXIIIa. "Even a son begotten by a *Sudra* conformably to a passage of *Yāj.* "on a female slave, may take a share by the father's *nyawalcya*. "choice."

CXXXIV. "But, if the father be dead, the brethren should make him partaker of the moiety of a share: and one, who has no brothers, may inherit the whole property, in default of daughter's sons."\*

2. The son, begotten by a *Sudra* on a female slave, obtains a share by the father's choice, or at his pleasure. But, after [the demise of†] the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share: that is, let them give him half [as much as is the amount of one brother's‡] allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a share only.

2. Interpretation of the text.

3. From the mention of a *Sudra* in this place, [it follows, that] the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance.

3. But the son of a regenerate man by a female slave has a maintenance only.

\* *Yājñawalkya*, 2. 133a.—134.

† *Bāḥm-bhatta*.

‡ *Subōd'hini* and *Bāḥm-bhatta*.

## CHAPTER II.

### SECTION I.

*Right of the Widow to inherit the estate of one, who leaves  
no Male Issue.*

1. The subject  
of collateral suc-  
cession is next  
considered.

I. THAT sons, principal and secondary, take the heritage,  
has been shown. The order of succession among all [tribes  
and classes\*] on failure of them, is next declared.

2. Passage of  
*Yājñavalkya* on  
that subject.

CXXXV. "The wife, and the daughters also,  
"both parents, brothers likewise, and their sons,  
"gentiles, cognates, a pupil, and a fellow student."

CXXXVI. "On failure of the first among these,  
"the next in order is indeed heir to the estate of one,  
"who departed for heaven leaving no male issue.  
2 "This rule extends to all [persons and†] classes."‡

3. Interpreta-  
tion of it. The  
heir of a per-  
son, who leaves no  
male issue, is the  
first in succession,

3. He, who has no son of any among the twelve descrip-  
tions above-stated (C. I. Sect. 11.) is one having 'no male  
issue.' Of a man, thus leaving no male progeny, and going to  
heaven, or departing for another world, the heir, or successor,

### ANNOTATIONS.

2. "Brothers likewise."] This is understood by *Bālam-bhatta* as signifying  
both brothers and sisters.

"And their sons."] *Bālam-bhatta* understands the daughters of brothers, as  
well as their sons.

\* *Subōdhini*.

† *Subōdhini*, &c.

‡ *Yājñavalkya*, 2. 135.—136.

is that person, among such as have been here enumerated, (viz. the wife and the rest,) who is next in order, on failure of the first-mentioned respectively. Such is the construction of the sentence.

according to the enumeration in the text.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the *Múrd'hávasicta* and others in the direct series of the classes, or *Súta* and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

4. The rule is the same in all tribes and classes.

5. In the first place, the wife shares the estate. "Wife" (*patní*) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connexion with religious rites.

5. The widow is first entitled to the succession.

### ANNOTATIONS.

3. *Such is the construction of the sentence.*] The commentator *Bálu-Úhatta* disapproves the reading which is here followed. The difference is, however, immaterial.

5. *Conformably with the etymology.*] A rule of grammar is cited in the text: viz. *Pānini*, 4. 1. 35.

The author of the *Subśūdhini* remarks, that the meaning of the grammatical rule cited from *Pānini* is this: *Patní* 'wife' anomalously derived from *Patí* 'husband,' is employed when connexion with religious rites is indicated: for they are accomplished by her means, and the consequence accrues to him. The purport is, that a woman, lawfully wedded, and no other, accomplishes religious ceremonies: and therefore one espoused in lawful marriage is exclusively called a wife (*patní*). Although younger wives are not competent to assist at sacrifices or other religious rites, if an eldest wife exist, who is not disqualified; still, since the rest become competent in their turns, on failure of her, or even during her life, if she be afflicted with a lasting malady or be degraded for misconduct, they possess a capacity for the performance of religious ceremonies: and here such capacity only is intended. Or else marriage may be exclusively meant by religious rites: for offerings are made to deities at that ceremony; and such also is a sacrifice or solemn rite. Thus likewise, a woman lawfully espoused, and no other, is a wife (*patní*)



6. Passages of  
*Menu*,

*Vishnu*,

*Cátýáyana*,

and *Vrihaspati*  
concur in this.

6. *Vṛidd'ha Menu* also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."\* *Vṛihad Vishnu* likewise ordains it: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother."† So does *Cátýáyana*: "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, the daughter inherits if unmarried.‡" And again, in another place: "The widow, being a woman of honest family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue."|| Also *Vrihaspati*: "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren, be present."

7. Other texts,  
of a contrary im-  
port, cited from  
*Náreda*,

7. Passages, adverse to the widow's claim, likewise occur. Thus *Náreda* has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance."§

\* See a note on this passage in *Jimúta-váhana*, Ch. 11. Sect. 1. § 7.

† *Vishnu*, 17. 4.—7.

‡ Vide *infra*. Sect 2. § 2.

|| In the *Veeramitródaya*, this is cited as the text of a different author; but the commentator on the *Mitácsharā* treats it as a further passage from the author before cited.

§ *Náreda*, 13. 25.—26.

*Menu* propounds the succession of the father, or of the brother, *Menu*,  
to the estate of one who has no male offspring: "Of him,  
who leaves no son, the father shall take the inheritance, or  
the brothers."\* He likewise states the mother's right to the  
succession, as well as the paternal grandmother's: "Of a son  
dying childless, the mother shall take the estate: and, the  
mother also being dead, the father's mother shall take the  
heritage."† *Sanc'ha* also declares the successive rights of *Sanc'ha*,  
brothers, and of both parents, and lastly of the eldest wife:  
"The wealth of a man, who departs for heaven, leaving no  
male issue, goes to his brothers. If there be none, his father  
and mother take it: or his eldest wife." *Cátýáyana* too says, *and Cátýáyana*,  
"If a man die separate from his coheirs, let his father take  
the property on failure of male issue; or successively the  
brother, or the mother, or the father's mother."

8. The application of these and other contradictory pas-  
sages is thus explained by *D'hárésvara*: 'The rule, deduced  
from the texts [of *Yágyawalkya* &c.†], that the wife shall  
take the estate, regards the widow of a separated brother:  
and that, provided she be solicitous of authority for raising  
up issue to her husband. Whence is it inferred, that a  
widow succeeds to the estate, provided she seek permission

8. *D'hárésvara*  
ra's mode of re-  
conciling the con-  
tradiction. 'The  
rule for the wi-  
dow's succession  
concerns the wi-  
dow of a separated  
brother seeking to  
raise up offspring  
to him.'

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8. *And other contradictory passages.*] Alluding to the texts of *Gautama*  
and *Dévala* subsequently quoted.—*Bálam-bhatta*.

*The rule deduced from the texts.*] From those of *Yágyawalkya* (§ 2.,)  
*Vrid'd'ha-Menu*, *Vishnu*, *Cátýáyana* and *Vrikaspati* (§ 6.)—*Subód'hini* &c.

"If she seek . . . offspring."] The particle (*vá*) is understood by the author,  
by whom the passage is here cited, in the conditional sense, as appears from

\* *Menu*, 9. 185. Vide Sect. 4. § 1.

† *Menu*, 9. 217. Vide Sect. 4. § 2. & Sect. 5. § 2.

‡ *Subód'hini*.

for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance,"\* and other similar passages [as *Náreda's* &c.†] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of *Gautama*: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him."‡

This is confirmed  
by *Gautama*.

9. Interpretation  
of the text.

9. 'The meaning of the text is this: persons, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estate, provided she seek progeny.'

10. Confirmed  
by passages of  
*Menu*, which show,  
that the property  
goes to the son  
borne by the wi-  
dow.

10. '*Menu* likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother,

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the interpretation of the text in the next paragraph (§ 9.); according to the remark of the commentators on the *Mitácšhará*. But the scholiast of *Gautama* takes it in its usual disjunctive sense: and the text is differently interpreted by the author of the *Mitácšhará* himself (§ 18.)

10. "*Must . . . deliver the estate to the son.*" It is thus shown, that a separated brother is meant; else, if there had been no partition, he could not have separate property. In the text subsequently cited, it appears from the direction for making the division equally, that the case of an unseparated coheir is intended. Since there could be no partition, if he were already separated.—*Subád hini*.

\* *Menu*, 9. 185. Vide supra. § 7.

† *Bálan-bhatta*.

‡ *Gautama*, 28. 19.—20. Vide infra. § 18.

deliver the estate to the son.”\* So, in the case of undivided property likewise, the same author says, “Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled.” †

11. ‘*Vasishṭha* also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive (“An appointment shall not be through covetousness;” ‡) thereby intimates, that the widow’s succession to the estate is in right of such an appointment, and not otherwise.’

11. *Vasishṭha* also hints, that the widow’s succession is in contemplation of her issue.

12. ‘But, if authority for that purpose have not been received, the widow is entitled to a maintenance only; by the ext of *Nāreda*: “Let them allow a maintenance to his women for life.”’ ||

12. Else she has a maintenance only; according to *Nāreda*.

13. ‘The same (it is pretended) will be subsequently declared by the contemplative saint: “And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so, indeed, should those, who are perverse.”’ §

13. A passage of *Yājñavalkya*, supposed to bear the same import.

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11. *The widow’s succession is in right of such an appointment.*] A widow, who has accepted authority for raising up issue to her husband, has the right of succession to his estate; but no other widow has so.—*Vecramitrodāya*.

13. *The same (it is pretended) will be declared*] Here the particle *cū* indicates disapprobation; as in the example ‘Ah! wilt thou [presume to] fight.’ For this passage of *Yājñavalkya* will be expounded in a different sense. So the expression ‘by some author’ (§ 14.) is intended as an indication of disrespect. Hence the insertion of the passage so cited, in this argument, does not imply an acknowledgment of it as original and genuine.—*Subōd’hini*.

\* *Menu*, 9. 146.

† *Menu*, 9. 120.

‡ *Vasishṭha*, 17. 48.

§ *Nāreda*, 13. 26. Vide *supra*. § 7.

§ *Yājñavalkya*, 2. 113.

14. Women are  
inapt to inherit  
wealth, since it  
is designed for  
religious uses.

14. 'Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites. Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices: and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." "Riches were ordained for sacrifices. Therefore they should be allotted to persons who are concerned with religious duties; and not be assigned to women, to fools, and to people neglectful of holy obligations."'

15. *Dhárś-*  
*ward's* argument  
(§ 8.--11) rebut-  
ted.

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text, ("The wife and the daughters also &c."\*) nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of the son subsequently produced [by means of the appointment †] does not ensue. But, if the offspring be the sole cause [of her claim, ‡] the wife should not be recited as

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14. *It has been declared by some author.*] The passage here cited is not considered as authentic; and no authority is shown for that and the following text. — *Bālam-bhatta*.

15. *And the right of the son subsequently produced does not ensue* Which is inconsistent with the enunciation of his right of succession, as of

\* § 2.

† *Bālam-bhatta*.

‡ *Bālam-bhatta*.

a successor : since, in that case, the son alone has a right to the goods.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong : for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman."\*

16. His objections obviated.

17. Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions. Now by here affirming the right of a widow, who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared : and therefore the wife ought not to be mentioned under the head [of succession to the estate†] of one who leaves no male issue.

17. An inconsistency in his interpretation shown.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from

18. His explanation of Gautama's text (§ 8.)

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of the twelve descriptions of sons, preferably to the widow and other heirs.—*Subôl'hini* and *Bâlam-bhatta*.

16. *That is wrong : for it is inconsistent with the following text.*] Admitting the restriction, that women obtain property through their husbands or sons only, still that restriction does not hold good universally, since women's right of property is declared in other instances.—*Subôl'hini*.

17. *The wife ought not to be mentioned.*] She ought not to be here mentioned, lest it should be thought a vain repetition.—*Subôl'hini*.

18. *She may either seek to obtain progeny.*] The author proposes two modes of conduct for a woman whose husband is deceased. One is, that she should

\* *Menu*, 9. 194.

† *Bâlam-bhatta*.

proved to be erroneous. The right interpretation of it stated. A chaste widow's succession is expressly affirmed: and an appointment to raise up issue is condemned.

the text of *Gautama*: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man: and she may either [remain chaste, or may] seek offspring.\*" This too is erroneous: for the sense, which is there expressed, is not 'if she seek to obtain offspring, she may take the goods of one who left no issue,' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue; or his widow takes his estate: and she may either seek to obtain progeny, or may remain chaste.' This is an instruction to her, in regard to her duty. For the particle, (*vá*) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared: "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share."† And an authority to raise up issue is expressly condemned by *Menu*: "By regenerate men no widow must be

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seek offspring, or endeavour to obtain male issue under an authority for that purpose. The term *vá* (either, or,) in this place does not signify 'if;' but indicates an alternative and that implies an opposite case; and the opposite case is the second mode of conduct, which, though not expressly stated in the text, must, by force of the particle *vá*, in its usual disjunctive acceptation, be opposite to the desire of obtaining progeny by means of an appointment to raise up issue: and this is consequently determined to be the duty of chastity. The meaning therefore is this: two modes of conduct are here prescribed;

\* Vide § 8. The text is here translated according to the commentator's interpretation.

† Vide § 6.

authorized to conceive by any other ; for they, who authorize her to conceive by another, violate the primeval law.”\*

19. But the text of *Vasishṭha* “An appointment shall not be through covetousness;”† must be thus interpreted : ‘if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession ; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.’

19. Proper interpretation of the text of *Vasishṭha* (§ 11.)

20. As for the text of *Nāreda*, “Let them allow a maintenance to his women for life,”‡ Since reunion of parceners had been premised (in a former text, viz. “The shares of reunited brethren are considered to be exclusively theirs;”||) it must be meant to assign only a maintenance to their childless widows. Nor is tautology to be objected to that passage, the intermediate text being relative to reunited parceners (“Among brothers, if any one die without issue, &c.”§) For women’s separate property is exempted from partition by this explanation of what had been before said ;

20. And of the passage of *Nāreda* (§ 12.)

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either she must seek male issue by means of an appointment for that purpose, or she must remain chaste.—*Subōd’hini*.

19. *Therefore an appointment . . . must not be accepted.*] Considering, that she has not herself a right to the estate, she ought not to seek an authority for raising up issue, from covetousness, with the view that the wealth may go to her progeny, as it cannot belong to herself.—*Subōd’hini*.

20. *Nor is tautology to be objected.*] On the ground, that both passages convey the same import. For, in explaining what had been before said, the two several passages convey two distinct meanings : namely, that the women’s

\* *Menu*, 9. 64. Vide C. 1. Sect. 10. § 8.

† Vide § 11.

‡ *Nāreda*, 13. 26. Vide § 12.

|| *Nāreda*, 13. 24.

§ *Nāreda*, 13. 25. See *Jāmāta-vāhana*, Ch. 11. Sect. 1. § 48.



and a mere maintenance for the widow is at the same time ordained.

21. The text of *Yājñavalkya* (§ 13) also will be explained in a different sense.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported,"\* will be subsequently shown to intend the wife of an impotent man and so forth.†

22. *Dhárś-  
vara's* argument of women's inapt-  
ness to inherit (§ 14), refuted.

22. As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites, that is wrong: for, if every thing, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings

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separate property is not to be divided; and that a maintenance only is to be granted to them. What had been before said, is not all which is afterwards declared; that it should be charged with tautology. The text "Among brothers, if any one die without issue," is an explanation of the preceding one ("The shares of reunited brethren are considered to be exclusively theirs.") The close of it, "except the wife's separate property," is a declaration of her property being indivisible; and the subsequent passage ("Let them allow a maintenance to his women for life") contains a separate injunction. — *Bālam-bhatta*.

22. *Sacrifice here signifies religious duty in general.*] The relinquishment of a thing, with the view to its appertaining to a deity, is a sacrifice (*yāga*) or consecration of the thing. The same design terminated by casting the thing into flames, is a burnt offering (*hōma*) or holocaust. The conferring of property on another by annulling a previous right, is a gift (*dāna*) or donation. Such is the difference between sacrifice, burnt offering and donation. — *Subāḍ'hina*.

\* Vide supra. § 13.

† Vide Sect. 10. § 15.

and the rest are acts of religious duty : still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished ; and, if that be the case, there is an inconsistency in the following passages of *Yājñawalkya*, *Gautama* and *Menu*. “Neglect not religious duty, wealth or pleasure in their proper season.”\* “To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure.”† “The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure.”‡]

It is shown to be inconsistent with passages of *Yājñawalkya*, *Gautama*, and *Menu*.

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold (inculcated by a passage of the *Vēda*||) “Let gold be preserved,” is intended not for religious ends, but for human purposes.

23. And is incompatible with the reasoning of the *Mīmāṃsā*.

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden &c.§]

24. Women might inherit, though wealth were designed for religious uses.

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“*In their proper season.*”] This part of the text was wanting in the quotation of it, as here exhibited : but the passage, as it is read in its proper place, by the *Mitācsharā*, *Aparāra* and the *Dīpaśālī*, contains the words *svacē cālē* ‘in their proper season.’

23. *The argument would be reversed.*] The reasoning here alluded to occurs in the *Mīmāṃsā* ; and is the 12th topic of the 4th section of the 3rd chapter. The passage of the *Vēda*, which is there examined, and the initial words of which are quoted in the text, enjoins the careful preservation of gold,

\* *Yājñawalkya*, 1. 115.

† Not found in *Gautama*’s institutes.

‡ *Menu*, 2. 96. partially quoted in this place.

|| *Bālam bhakta*.

§ *Bālam-bhaktā*.

25. Though held in thralldom, they are capable of property.

25. The text of *Náreda*, which declares the dependence of women, ("A woman has no right to independence,"\*) is not incompatible with their acceptance of property; even admitting their thralldom.

26. Right interpretation of passages before cited (§ 14).

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices &c."†) to be understood? The answer is, wealth, which was obtained [in charity‡] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that: for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow."||

27. A passage of *Cátýáyana* assigns a subsistence to females, when an estate escheats to the king for want of heirs.

27. It is said by *Cátýáyana* "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges: but the goods belonging to a venerable priest, let him bestow on venerable priests."

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lest it lose its brightness and be tarnished. The question, raised on it, is whether the observance of the precept be essential to the efficacy of sacrifice or serve only a human purpose; and the result of the reasoning is, that the precept affects the person, and not the sacrifice. This reasoning is considered by the author to be incompatible with the notion, that wealth is intended solely for sacrificial uses.

27. "Let him bestow on venerable priests" . . . 'let him bestow on a venerable priest.'] The commentator, *Bálam-bhatta*, considers as a variation in the reading of the text, the subsequent interpretation of it, 'let him bestow on a venerable priest.' *śrótṛiáyánopádayét* in place of *śrótṛiáyébhyas tad arpayét*. He remarks, however, that the singular number is used generically.

\* *Náreda*, 13. 31.

† Vide § 14.

‡ *Bálam-bhatta*.

|| This is a passage of *Menu* according to *Bálam-bhatta*; and a text of the same import, but expressed in other words, occurs in his institutes, 11. 25.

"Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him bestow on a venerable priest.'

Interpretation of the text.

28. This relates to women kept in concubinage: for the term employed is "females" (*yōshid.*) The text of *Nārada* likewise relates to concubines; since the word there used is "women" (*strī.*) "Except the wealth of a *Brahmana* [property goes to the king on failure of heirs.] But a king, who is attentive to the obligations of duty, should give maintenance to the women of such persons. The law of inheritance has been thus declared."\*

28. It relates to concubines; and so does a similar text of *Nārada*.

29. But since the term "wife" (*patnī*) is here employed, (§ 2.) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

29. But here (§ 2.) the wife's right of succession is declared.

30. Therefore the right interpretation is this: when a man, who was separated from his coheirs and not reunited with them, dies leaving no male issue, his widow [if chaste†] takes

30. If her husband was separated from his coheirs and not reunited.

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28. The text . . . relates to concubines.] Or to twice-married women and others not considered as wives espoused in lawful wedlock.--*Bālam-bhatta*.

\* *Nārada*, 13. 51.—52.

† *Bālam-bhatta*.

the estate in the first instance. For partition had been premised ; and reunion will be subsequently considered.

31. *Srícara's* opinion refuted. He supposes the widow's succession to be restricted to the case of a small property. But she takes a share, though there be sons.

31. It must be understood, that the explanation, proposed by *Srícara* and others, restricting [the widow's succession] to the case of a small property, is refuted by this [following argument.\*] If there be legitimate sons, it is provided, whether partition be made in the owner's life-time or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions."† And again : "Of heirs dividing after the death of the father, let the mother also take an equal share."‡ Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence from the wealth of her husband, who died leaving no male issue.

32. She does not take merely enough for her subsistence.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;")

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31. *It is a mere error to say, that the wife takes nothing but a subsistence.* If the wife share a portion equal to that of a son, not an allotment sufficient only for her support, both when the husband is living, and after his decease, though sons exist ; more especially should it be affirmed, that she obtains the whole wealth of her husband, who leaves no male issue : and thus, since the widow's succession to the whole estate is established by reasoning a fortiori, the assertion, that she obtains no more than food and raiment, is erroneous. Besides, since the wife's participation with a son, who is entitled to take a share of the estate, or, if there be no other son, the whole of it, has been expressly ordained, it is fit that she should, on failure of male issue, take the wealth of her childless husband being separate from his coheirs.—*Subód'hini.*

32. *For the words "share" and "equal" might consequently be deemed unmeaning.* These terms are commonly employed to signify 'portion' and 'parity.' By abandoning their own signification without sufficient cause, they would appear unmeaning.—*Subód'hini.*

\* *Bálam-bhatta.*

† Ch. 1. Sect. 2. § 8.

‡ Ch. 1. Sect. 7. § 1.

a woman takes wealth sufficient only for her maintenance. That is wrong : for the words " share " or " portion," and " equal " or " like," might consequently be deemed unmeaning.

33. Or suppose, that, if the wealth be great, she takes precisely enough for her subsistence ; but, if small, she receives a share equal to that of a son. This again is wrong : for variableness in the precept must be the consequence. Thus, if the estate be considerable, the texts above cited, (" his wives must be rendered partakers of like portions," and " let the mother also take an equal share ;") assisted by another passage [" Let them allow a maintenance to his women for life ;" § 12\*] suggest an allotment adapted for bare support. But, if the estate be inconsiderable, the same passages indicate the assignment of a share equal to a son's.

33. Nor a subsistence if the estate be large, and a share if it be small.

34. Thus, in the instance of the *Châturmāsya* sacrifices, in the disquisition [of the *Mīmāṃsā*] on the passage *dwayóh*

34. Argument illustrated by reasoning quoted from the *Mīmāṃsā*.

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33. *Variableness in the precept must be the consequence.*] If the passages above cited (§ 31.), assisted by another passage (§ 12 ), ordain the widow's receipt of a sufficiency for her support, at the time of making a partition with the sons, whether her husband, who was wealthy, be then alive or dead ; but ordain her taking of a share equal to that of a son, if her husband possess little property ; then a single sentence, once uttered, is in one case dependant [on a different passage, for its interpretation,] and not so in another instance. Consequently, since it does not retain an uniform import, there is variableness in the precept.—*Subódhini*.

34. *In the instance of the Châturmāsya sacrifices* ] These are four sacrifices performed on successive days, according to some authorities ; but in the months of *Ashád'ha*, *Cártica* and *P'halguna*, according to others. They are severally denominated *Vaisvédéva*, *Varuna-praghusa*, *Sácaméd'ha* and *Sindáś-ríya*. The oblations consist of roasted cakes (*Parólása*) ; and, at the second of them, two figures of sheep made of ground rice. The cakes are prepared in the

\* *Subódhini* and *Bálam bhalla*.

*pranayanti* ;\* where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the *Sóma-yága* extend to these sacrifices ; in consequence of which the injunction not to construct a northern altar (*uttara-védi*) at the *Vaisvédéva* and *Sunásríya* sacrifices, must be understood as a prohibition of such altar ; [which should else be constructed at those sacrifices, as at a *Sóma-yága* :] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the *Sóma-yága*, but an exception to the express rule “ prepare an *uttara-védi* at this sacrifice [viz. at the *Cháturmásya* :”] it is urged in reply by the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim : but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods

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usual manner, consisting of ground rice, kneaded with hot water, and formed into lumps of the shape of a tortoise : these are roasted on a specified number of potsherds (*capála*) placed in a circular hole, which contains one of the three consecrated fires perpetually maintained by devout *Brahmanas*.

[In the disquisition on the passage *dwayóh pranayanti*.] Part of a passage of the *Véda*, which is the subject of a disquisition in the *Mímánsá*, and which gives name to it. This is the ninth (or, according to one mode of counting, the seventh) topic in the third section of *Jaimini's* seventh chapter — See *Jináta-ráhana*, Ch. 11. Sect. 5.

[Since the same precept authorizes the occasional construction of the altar.] Since one precept commands it at a *Cháturmásya* sacrifice, and another forbids

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\* *Mímánsá*, 7. 3. 9.

of sacrifice is a recital of a constant rule; and that the injunction, "prepare the *uttara-réti* at this sacrifice," commands its construction at the two middle periods (namely the *Varuna-praghāsa* and *Sācaméd'ha* with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of *Menu* ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,"\*) as well as from that of *Sane'ha* ("The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife."†) The succession of brothers, to the estate of one who leaves no male issue, is deduced; and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life:"‡ this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest; but, if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also;")§ is propounded, on the controverted question whether

35. Another exposition of the text of *Menu*, *Sane'ha* and *Nāreda* proposed.

#### ANNOTATIONS.

it at two of the periods of that sacrifice; the injunction, contrasted with the prohibition, seems to imply an option in this case: but, not being contrasted with any other rule, it becomes a cogent precept in the instance of the two other periods: and thus the rule, being cogent in one case and not in the other, is variable in its import and effect.

35. *On the controverted question whether the widow or the brothers inherit.*] Whether the widow inherits, as provided by *Nāreda*; or the brothers succeed conformably with the texts of *Menu* and *Sane'ha*.—*Bālam-bhatta*.

*This opinion the reverend teacher does not tolerate.*] Meaning *Viśvarūpa*.—*Subbāhini* and *Bālam-bhatta*.

\* Vide § 7.

† *Nāreda*. Vide § 7.

‡ Ibid.

§ *Nānyawalcya*. Vide § 2.



It is condemned by *Viswakūpa*, who interprets otherwise the text of *Menu* (§ 7;) and that of *Sanc'ha* (§ 7.)

the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate; for he interprets the text, "Of him who leaves no son, the father shall take the inheritance, or the brothers;"\* as not relating to the order of succession, since it declares an alternative; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of *Sanc'ha* too relates to a reunited brother.

36. The passage of *Yājñyavalkya* cannot be taken as relating to a small estate in one instance; since it must relate to wealth generally in another cases.

36. Besides it does not appear either from this passage [of *Yājñyavalkya* †] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence, "On the failure of the first among these, the next in order is heir;"‡ be restricted to the case of a small property, by reference to another passage, in two instances (of the widow and of the daughters,) but relate to wealth generally in the other instances (of the father and the rest,) the consequent defect of *variableness in the precept* (§ 33.) affects this interpretation.

37. It appears from a passage of *Hārīta*, that a widow, suspected of incontinency, has a maintenance

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life."|| This passage of *Hārīta* is intended for a denial of the right of a widow suspected of incontinency,

#### ANNOTATIONS.

*The text of Sanc'ha relates to a reunited brother.*] It relates to the case of a brother, who, after separation, becomes associated with his coheirs, from affection or any other motive.—*Subód'hini*.

\* *Menu*. Vide § 7.

† *Subód'hini*.

‡ Vide § 2.

|| In the *Viváda-chintámani* this passage is read without the conditional particle: viz. "A woman . . . is headstrong: but a maintenance must ever be given to her. ...."

to take the whole estate. From this very passage [of *Hári-ta\**], it appears that a widow, not suspected of misconduct, has a right to take the whole property.

only ; but otherwise inherits the whole property.

38. With the same view, *Sanc'ha* has said " Or his eldest wife." (§ 7.) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth ; and, like a mother, maintains any other headstrong wife [of her husband.] Thus all is unexceptionable.

38. This serves to explain a passage of *Sanc'ha* (§ 7.)

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue.

39. Conclusion.

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## SECTION II.

### *Right of the Daughters and Daughter's Sons.*

1. On failure of her, the daughters inherit. They are named in the plural number (Section 1. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

1. After a wife, a daughter inherits : whatever be her tribe.

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## ANNOTATIONS.

1. *They are named in the plural number.* Here female issue is signified by the original word "daughter" (*duhitri*;) and that is applicable, indifferently, to such as belong to the same or to different tribes. Plurality is denoted by the termination of the plural number, (*as in duhitaras*;) which includes, without inconsistency, those who are dissimilar from the parent. Therefore daughters, alike or different by class, are indicated by the original word and its termination. They share equal or unequal portions in the order before mentioned: namely four shares, three, two or one (Ch. 1. Sect. 8. § 1.)—*Subód'hini*.

2. Passages of *Cātyāyana* and *Vrihaspati* declare her right of succession.

2. Thus *Cātyāyana* says, "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, let the daughter inherit, if unmarried."\* Also *Vrihaspati*: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

3. First the unmarried daughter inherits.

3. If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried.")

4. Next a married but unprovided one. And lastly an enriched one.

4. If the competition be between an unprovided and an enriched daughter, the unprovided one inherits; but, on failure of such, the enriched one succeeds: for the text of *Gautama* is equally applicable to the paternal, as to the maternal, estate. "A woman's separate property goes to her daughters, unmarried or unprovided."†

5. An appointed daughter is not meant.

5. It must not be supposed, that this relates to the appointed daughter: for, in treating of male issue, she and her son have been pronounced equal to the legitimate son, ("Equal

### ANNOTATIONS.

4. The text of *Gautama* is equally applicable to the paternal . . . estate. The meaning is this: since the daughter's right is declared with reference to a woman's peculiar property, but it is not intended by using the word "woman's" to restrict it positively to that single object, the parity of reasoning holds good.—*Subôd'hini*.

5. For, in treating of male issue, she and her son have been pronounced &c.] Since she has been noticed while treating of male issue, the introduction of her in this place would be improper.—*Subôd'hini*.

\* Vide supra. Sect. 1. § 6.

† *Gautama*, 23. 22. Vide supra, Ch. 1. Sect. 3. § 11.

to him is the son of an appointed daughter,"\* or the daughter appointed to be a son.†

6. By the import of the particle "also" (Sect. 1. § 2.) the daughter's son succeeds to the estate on failure of daughters. Thus *Vishnu* says, "If a man leave neither son, nor son's son, nor [wife, nor female ‡] issue, the daughter's son shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons."|| *Menu* likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation and possess the inheritance."§

6. The daughter's son inherits on failure of daughters; as declared by *Vishnu*, and by *Menu*.

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### SECTION III.

#### *Right of the Parents.*

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

1. Next both parents inherit.

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### ANNOTATIONS.

6. *The daughter's son succeeds to the estate on failure of daughters* ] According to the commentary of *Bālam-bhatta*, the daughter's daughter inherits in default of daughter's sons. He grounds this opinion, for which however there is no authority in *Vijnyānēśvara's* text, upon the analogy, which this author had admitted in another case, between the succession to a woman's separate property and the inheritance of the paternal estate. (Vide § 4.)

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\* Ch. 1. Sect. 11 § 1.

† Ch. 1. Sect. 11. § 3.

‡ *Bālam-bhatta*.

|| Not found in *Vishnu's* institutes: but cited under his name in the *Smṛiti-chandricā*,

§ *Menu*, 9. 136.

2. First the mother ; and after her the father.

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenor of the text; Sect. 1. § 2.] since a conjunctive compound is declared to present the meaning of its several terms at once;\* and the omission of one term and retention of the other constitute an exception† to that [complex expression;] yet, as the word ‘mother’ stands first in the phrase into which that is resolvable, and is first in the regular compound (*mātápitarau*) ‘mother and father’‡ when not reduced [to the simpler form *pitarau* ‘parents’] by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance; and, on failure of her, the father.

#### ANNOTATIONS.

2. *Although the order . . . do not clearly appear.*] It is declared, that the two parents are successors to the property, if there be no daughter nor daughter’s son. Since the term (*pitarau*) ‘parents’ is formed by omitting one and retaining the other member of a complex expression (mother and father;) shall they conjointly take the estate, or severally? and is the order of succession optional, or fixed and regulated? The author replies to these questions.—*Subódhini*.

*A conjunctive compound is declared &c.*] A compound term is formed, as directed by *Pānini* and his commentators,|| when two or more nouns occur with the import of the conjunction ‘and,’ in two of its senses (viz. reciprocation and cumulation.§) This is limited by the emendatory rule of *Cātyāyana* to the case where the sense conveyed by each word is presented at once: while the same terms, connected in a phrase by the conjunction copulative, would present the sense of each successively.

*The omission of one term and retention of the other constitute an exception.*] When the word *pitri* ‘father’ occurs with *mātri* ‘mother,’ it may be retained

\* *Vārtica*, 1. on *Pānini*, 2. 2. 29.

† *Pānini*, 1. 2. 70.

‡ *Vārtica*, 3. on *Pānini*, 2. 2. 31.

|| Vide *infra*. Sect 11. § 20.

§ See Dictionary of *Amara*, Book 3. Chap. 4. Sect. 23. Verse 2.

3. Besides the father is a common parent to other sons, but the mother is not so : and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance, conformably with the text "To the nearest *sapinda*, the inheritance next belongs."\*

3. The mother is nearest to her son ; and should therefore inherit ; conformably with a passage of *Menu*.

### ANNOTATIONS.

and the other term be rejected. This is an exception to the general rule of composition. It is optional ; and the regular form may be retained in its stead. Ex. *Pitarau* 'two parents ;' or *Mátápitara* 'mother and father.'—*Pānini*, 1. 2. 70. and 2. 2. 29.—34.

*The word mother stands first in the phrase into which that is resolvable.*] The compound term, whether reduced to the simpler expression or retaining its complex form, is resolvable into the phrase *mátā cha pitā cha* 'both the mother and the father.' This, however, is only the customary order of terms, not specially enjoined by any rule of syntax.

*Is first in the regular compound.*] Conformably with one of *Cūtyāyana*'s emendatory rules on *Pānini*'s canon for the collocation of terms in composition. (2. 2. 34.) That rule requires the most revered object to have precedence : and the example of the rule, as given in *Pātanjali's Mahābhāṣya* and *Yāmana's Cāsiacā-villī*, is this very compound term *mátápitara* 'mother and father.' The commentators, *Caiyata* and *Haradatta*, assign reasons why a mother is considered to be more venerable than a father.

*It follows, from the order of the terms.*] The compound term *mátápitara* 'mother and father,' as well as the abridged and simpler expression *pitara* 'parents,' is resolvable into the same phrase *mátā cha pitā cha* 'both the mother and the father.' Thus, in every form of expression, 'mother' stands first. Hence the author infers, that the mother's priority in regard to succession to wealth is intended by the text (Sect. 1. § 2.)

3. *The father is a common parent to other sons.*] The mother is, in respect of sons, not a common parent to several sets of them : and her propinquity is therefore more immediate, compared with the father's. But his paternity is common ; since he may have sons by women of equal rank with himself, as well as children by wives of the *Cshatriya* and other inferior tribes ; and his nearness is therefore mediate, in comparison of the mother's. The mother consequently is nearest to her child ; and she succeeds to the estate in the first instance, since it is ordained by a passage of *Menu*, that the person, who is nearest of kin, shall have the property.—*Subód'hini*.

\* *Menu*, 9. 187.

4. That text, though it speak of *Supindas*, is not restricted to them.

4. Nor is the claim in virtue of propinquity restricted to (*sapindas*) kinsmen allied by funeral oblations: but, on the contrary, it appears from this very text, (§ 3.) that the rule of propinquity is effectual, without any exception, in the case of (*samánódacas*) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Conclusion.

5. Therefore, since the mother is the nearest of the two parents, it is most fit, that she should take the estate. But, on failure of her, the father is successor to the property.

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### ANNOTATIONS.

5. *On failure of her, the father is successor to the property.*] The commentator, *Bilam bhatta*, is of opinion, that the father should inherit first and afterwards the mother; upon the analogy of more distant kindred, where the paternal line has invariably the preference before the maternal kindred; and upon the authority of several express passages of law. *Nanda Pandita*, author of commentaries on the *Mitácšhará* and on the institutes of *Vishnu*, had before maintained the same opinion. But the elder commentator of the *Mitácšhará*, *Viswésvara-bhatta* has in this instance followed the text of his author in his own treatise entitled *Madana-Párijáta*, and has supported *Tijayá-nésvara's* argument both there and in his commentary named *Subódhini*. Much diversity of opinion does indeed prevail on this question. *Srícara* maintains, that the father and mother inherit together: and the great majority of writers of eminence (as *Aparárca* and *Camalácara*, and the authors of the *Smṛiti-chandricá*, *Madana ratna*, *Vyavaháramayuc'ha* &c.) gives the father the preference before the mother. *Jimáta-váhana*, and *Raghunundana* have adopted this doctrine. But *Váchespati Misra*, on the contrary, concurs with the *Mitácšhará* in placing the mother before the father; being guided by an erroneous reading of the text of *Vishnu* (Sect. 1. § 6), as is remarked in the *Veeramitródaya*. The author of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance.

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## SECTION IV.

*Right of the Brothers.*

1. On failure of the father, brethren share the estate. Accordingly *Menu* says, "Of him, who leaves no son, the father shall take the inheritance or the brothers."\* 1. Next to the parents, the brothers inherit.

2. It has been argued by *D'hárésvara*, that, 'under the following text of *Menu*, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage;"† even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession: because wealth, devolving upon him, may go to sons dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe: and therefore the paternal grandmother takes the estate.' 2. *D'hárésvara* affirms the prior right of the paternal grandmother; on the ground of a passage of *Menu*.

## ANNOTATIONS.

1. *Brethren.*] The commentators, *Nanda Pandita* and *Bálam-bhatta*, consider this as intending 'brothers and sisters,' in the same manner in which "parents" have been explained 'mother and father,' (Sect. 3. § 2.) and conformably with an express rule of grammar (*Pānini*, 1. 2. 68.) They observe, that the brother inherits first: and, in his default, the sister. This opinion is controverted by *Camalácara* and by the author of the *Vyavaháramayuc'ha*.

2. *It has been argued by D'hárésvara.*] It had been shown (Sect. 3.,) that the father inherits on failure of the mother. But that is stated otherwise by different authors. To refute the opinion maintained by one of them, the author reverts to the subject by a retrospect analogous to the backward look of the lion.—*Subbód'hini* and *Bálam-bhatta*.

*Because wealth, devolving on him, may go to sons dissimilar.*] The meaning is this: if the succession be taken by the father, the property becomes a paternal estate, and may devolve on his sons whether belonging to the *Máda*-

\* *Menu*, 9, 185. Vide Sect. 1. § 7. † *Menu*, 9, 217. Vide Sect. 1. § 7.



3. But that is contradicted by *Viswarúpa*; citing another passage of the same author.

3. The holy teacher [*Viswarúpa*]\* does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above-cited: "The sons of a *Brahmana*, in the several tribes, have four shares, or three, or two, or one."†

4. A text of *Menu* excluding the king, intends the sovereign not the *Cshatriya*.

4. But the passage of *Menu*, expressing that "The property of a *Brahmana* shall never be taken by the king,"‡ intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe.]

5. The whole blood inherits first; as nearest of kin.

5. Among brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text before cited: "To the nearest *sapinda*, the inheritance next belongs."|| Since those of the half blood are remote through the difference of the mothers.

#### ANNOTATIONS.

*d'hávasicta* [or another mixt§] tribe or to his own class. But, if it be taken by the grandmother, it becomes a maternal estate and devolves on persons of the same tribe, namely her daughters; or successively, on failure of them, her daughter's sons, her own sons, and so forth.—*Subód'hini* and *Bálam-bhatta*.

4. *Intends the sovereign, not a son.*] It does not prohibit the succession of a *Brahmana*'s son by a *Cshatriya* wife, denominated king as being of his mother's tribe, which is the royal or military one. But it relates to an escheat to the sovereign. Therefore it is not an exception to the passage cited in the preceding paragraph: and *Viswarúpa*'s reasoning holds good, that '*D'háréswara*'s objection would be valid, if there were any harm in the 'ultimate succession of sons dissimilar by class. But that is not the case. 'On the contrary, they are expressly pronounced by the text here cited, to be 'partakers of inheritance.'—*Subód'hini*.

\* The name is supplied by the *Subód'hini*.

† *Yágyawalkya*, 2. 126. Vide supra. Ch. 1. Sect. 8. § 1.

‡ *Menu*, 9. 189. Vide infra. Sect. 7. § 5.

— || *Menu*, 9. 187. Vide Sect. 3. § 3.

§ *Bálam-bhatta*.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate.

6. Next the half blood.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

7. After brothers, nephews inherit in like manner.

8. In case of competition between brothers and nephews, the nephews have no title to the succession : for their right of inheritance is declared to be on failure of brothers ["both parents, brothers likewise, and their sons."—Sect. 1. § 2.\*]

8. They do not share with their uncles.

9. However, when a brother has died leaving no male issue [nor other nearer heir,†] and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father : and it is

9. But they take a share which had vested in their father.

### ANNOTATIONS.

6. *If there be no uterine (or whole) brothers, those by different mothers inherit.*] The author of the *Vyavahāramayuc'ha* censures the preference here given to the brothers of the half blood before the nephews, being sons of brothers of the whole blood.

7. *Their sons share the heritage.*] Including, say *Nanda Pandita* and *Bālam-bhatta*, the daughters as well as the sons of brothers, and the sons and daughters of sisters. This consequently will comprehend all nephews and nieces.

*In the order of the respective fathers.*] In their order as brothers of the whole blood, and of the half blood.—*Bālam-bhatta*.

By analogy to the case of grandsons by different fathers (Chap. 1. Sect. 8.), the distribution of shares shall be made, through allotments to their respective fathers, and not in their own right, whether there be one, two, or many sons of each brother.—*Subōd'hini*.

That is wrong : for the brethren had not a vested interest in their brother's wealth before their decease ; and property was only vested in the nephews by the owner's demise.—*Bālam-bhatta*.

\* *Subōd'hini* and *Bālam-bhatta*.

† *Bālam-bhatta*.

fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers.

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### SECTION V.

#### *Succession of Kindred of the same family name : termed Gótraja, or Gentiles.*

1. Next to the nephew, the kindred are heirs.

1. If there be not even brother's sons, gentiles share the estate. Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water.

2. First the paternal grandmother.

2. In the first place the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage :"\* no place, however, is found for her in the compact series of heirs from the father to the nephew : and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must, therefore, of course succeed immediately after the nephew ; and thus there is no contradiction.

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### ANNOTATIONS.

1. *Gentiles* ] *Gótraja* or persons belonging to the same general family (*Gótra*) distinguished by a common name : these answer nearly to the *Gentiles* of the Roman law.

2. *She must, therefore, of course succeed.*] Some copies of the *Mitácscharí* read this passage differently. The variation is noticed in the commentary of *Bálam-bhatta* ; viz. 'She succeeds, after the preceding claimants, if they be dead,' *uparitana-mritánantaram* instead of *utcarshé tat sut sutánantaram*.

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\* Sect. 1. § 7.

3. On failure of the paternal grandmother, the (*gôtraja*) kinsmen sprung from the same family with the deceased and (*sapinda*) connected by funeral oblations, namely the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (*band'hu* Sect. 6.)

3. Next the paternal grandfather.

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

4. After him, the uncles and their sons.

5. On failure of the paternal grandfather's line, the paternal great-grandmother, the great-grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations.

5. Then the great-grandmother, great-grandfather, grand uncles and so forth, to the seventh degree.

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The commentary remarks, that the 'preceding (*uparilana*) claimants' are the father and the rest down to the brother's son.

3. On failure of the paternal grandmother . . . the paternal grandfather.] *Bâlam-bhatta* insists, that the grandfather inherits before the grandmother, as the father before the mother.—See Section 3.

5. In this manner must be understood the succession of kindred.] The *Subôd'hini*, commenting on the first words of the following section, carries the enumeration a little further: viz. 'the paternal great-grandfather's mother, great-grandfather's father, great-grandfather's brothers and their sons. The paternal great-grandfather's grandmother, great grandfather's grandfather, great-grandfather's uncles and their sons. The same analogy holds in the succession of kindred connected by a common libation of water.'

The scholiast of *Vishnu*, who is also one of the commentators of the *Mîtâc-sharâ*, states otherwise the succession of the near and distant kindred, in expounding the passage of *Vishnu* "if no brother's son exist, it passes to kinsmen (*band'hu*;) in their default, it devolves on relations (*saculya*):"\* where *Bâlam-bhatta*, on the authority of a reading found in the *Madena ratna*, proposes to transpose the terms *band'hu* and *saculya*; for the purpose of reconciling *Vishnu*

\* *Vishnu*, 17. 10,—11,

6. Afterwards more distant kindred : either to the 14th degree ; or as far as consanguinity is ascertainable : so *Menu* describes them.

6. If there be none such, the succession devolves on kindred connected by libations of water : and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food : or else, as far as the limits of knowledge as to birth and name extend. According-

### ANNOTATIONS.

with *Yājñavalkya*, by interpreting *saculya* in the sense of *gōtraja* or kinsmen sprung from the same family.\* *Nanda Pandita*, preserving the common reading, says ' kinsmen (*band'hu*) are *sapindas* ; and these may belong to ' the same general family or not. First those of the same general family ' (*sagōtra*) are heirs. They are three, the father, paternal grandfather, and ' great grandfather ; as also three descendants of each. The order is this : In ' the father's line, on failure of the brother's son, the brother's son's son is heir. ' In default of him, the paternal grandfather, his son and grandson. Failing ' these, the paternal great-grandfather, his son and grandson. In this manner ' the succession passes to the fourth degree inclusive ; and not to the fifth : for ' the text expresses " The fifth has no concern with the funeral oblations."\* ' The daughters of the father and other ancestors must be admitted, like the ' daughter of the man himself, and for the same reason. On failure of the ' father's kindred connected by funeral oblations, the mother's kindred are heirs : ' namely the maternal grandfather, the maternal uncle and his son ; and so ' forth. In default of these, the successors are the mother's sister, her son and ' the rest.'

The commentator takes occasion to censure an interpretation, which corresponds with that of the *Mitácsharā* as delivered in the following section (S. 6. § 1.) ; and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth : because it would follow, that the father's sister's son and the rest would inherit, although the man's own sister and sister's sons were living. *Bālam-bhatta*, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons : which is indeed *Nanda Pandita*'s own doctrine.

He adds, ' after the heirs above-mentioned, the *saculya* or distant kinsman is ' entitled to the succession : meaning a relation in the fifth or other remoter ' degree.'

\* *Menu*, 9. 186.

ly *Vṛihat-Menu* says "The relation of the *sapindas*, or kindred connected by the funeral oblation, ceases with the seventh person : and that of *samánódacas*, or those connected by a common libation of water, extends to the fourteenth degree ; or as some affirm, it reaches as far as the memory of birth and name extends. This is signified by *gōtra* or the relation of family name."\*

SECTION VI.

*On the succession of Cognate Kindred, Band'hu.*

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds ; related to the person himself, to his

1. After gentiles, cognates are heirs. They are

ANNOTATIONS.

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitācsharā*. On the other hand, the author of the *Vecramitródaya* has exactly followed the *Mitācsharā* ; and so has *Camalācara* : and it is also confirmed by *Mād'hava-āchārya*, in the *Vyavahāra Mād'hava*, as well as by the *Smṛiti-chandricā*.

But the author of the *Vyavahāramayucca* contends for a different series of heirs after the brother's son : '1st the paternal grandmother ; 2d the sister ; '3d the paternal grandfather and the brother of the half blood, as equally 'near of kin ; 4th the paternal great-grandfather, the paternal uncle and the 'son of a brother of the half blood, sharing together as in the same degree of 'affinity.' He has not pursued the enumeration further ; and the principle stated by him, nearness of kin, does not clearly indicate the rule of continuation of this series.

1. *The cognates are heirs* ] *Band'hu*, cognate or distant kin, corresponding nearly to the *Cognati* of the *Roman* law.

*Cognates are of three kinds.*] *Bālam-bhatta* notices a variation in the reading, *bānd'havāh* for *band'havah*. It produces no essential difference in the interpretation.

\* The first part of this passage occurs in *Menu's institutes*, 5. 60. The remainder of the text differs.

*They are  
of three kinds,  
related to the person  
himself, to his  
brother, and to his  
brother's son.*

of three sorts, as distinguished in a passage of law.

father, or to his mother : as is declared by the following text. "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncles, must be reckoned his mother's cognate kindred."\*

2. First the kindred of the late owner ; then those of his father ; and lastly those of his mother.

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance : on failure of them, his father's cognate kindred : or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

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## SECTION VII.

### *On the succession of Strangers upon failure of the Kindred.*

1. After kindred, the preceptor is heir ;

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of

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## ANNOTATIONS.

*Related to the person himself, to his father or to his mother.*] *Aparāra*, as remarked by *Camalācara*, disallows the two last classes of cognate kindred, as having no concern with inheritance ; and restricts the term *bandhu*, in the text, to the kindred of the owner himself. The author of the *Vyavahāramayuc'ha* confutes that restriction.

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\* The text is seemingly ascribed by the commentator *Bālam-bhatta* to *Ṛidd'ha Sātātapa*. But it is quoted in the *Vyavahāra-Mād'hava* as a text of *Lāud'hāyana*.

*Apastamba*. "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or, failing him, the disciple." by the text of *Apastamba*: and, next to him, the pupil.

2. If there be no pupil, the fellow-student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow-student. 2. And, failing these, the fellow-student.

3. If there be no fellow-students, some learned and venerable priest should take the property of a *Brahmana*, under the text of *Gautama*: "Venerable priests should share the wealth of a *Brahmana*, who leaves no issue."\* 3. If there be none, a learned priest is heir; according to *Gautama*.

4. For want of such successors, any *Brahmana* may be the heir. So *Menu* declares: "On failure of all those, the lawful heirs are such *Brahmanas*, as have read the three *Védas*, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."† 4. Or any *Brahmana*, as *Menu* has provided.

5. Never shall a king take the wealth of a priest; for the text of *Menu* forbids it: "The property of a *Brahmana* shall never be taken by the king: this is a fixed law."‡ It is also declared by *Nārada*: "If there be no heir of a *Brahmana*'s wealth, on his demise, it must be given to a *Brahmana*. Otherwise the king is tainted with sin."|| 5. But not the king: so *Menu* and *Nārada* declare.

6. But the king, and not a priest, may take the estate of a *Cshatriya* or other person of an inferior tribe, on failure of 6. In other cases the sovereign takes the escheat:

#### ANNOTATIONS.

2. This must be understood to be the order of succession.] See a note at the close of the last section.

\* *Gautama*, 28. 39.

† *Menu*, 9. 183.

‡ *Menu*, 9. 189.

|| Not found in the institutes of *Nārada*.



as is ordained by *Menu*, heirs down to the fellow-student. So *Menu* ordains : " But the wealth of the other classes, on failure of all [heirs,] the king may take."\*

### SECTION VIII.

#### *On succession to the Property of a Hermit or of an Ascetic.*

1. The heirs of persons devoted to religion are specified by *Yājñavalkya*.

*Heirs to the success.*  
16th X 191

1. It has been declared, that sons and grandsons [or great-grandson†] take the heritage; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws :

CXXXVII. " The heirs of a hermit, of an ascetic, "and of a professed student, are, in their order, the "preceptor, the virtuous pupil, and the spiritual brother "and associate in holiness."‡

2. Exposition of the text.

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are, in order, (that is, in the inverse order,) the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The natural relations do not succeed. But the

3. The student (*brahmechāri*) must be a professed or perpetual one : for the mother and the rest of the natural heirs

### ANNOTATIONS.

1. "*A virtuous pupil.*" The condition, that he be virtuous is intended generally. Hence the preceptor and the fellow hermit are successors in their respective cases, provided their conduct be unexceptionable. With a view to this, *Yājñavalkya* has placed the words "virtuous pupil" in the middle of the text, to indicate the connexion of the epithet with the preceding and following terms.—*Subōd'hini* &c.

\* *Menu*, 9. 189.

† *Bālam-bhatta*.

‡ *Yājñavalkya*, 2, 137.

take the property of a temporary student ; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.\*]

preceptor is heir of a professed student.

4. A virtuous pupil takes the property of a *yati* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

4. And the pupil is the successor of an ascetic.

5. A spiritual brother and associate in holiness takes the goods of a hermit (*vānaprast'ha*.) A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.†] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness.

5. But the companion of a hermit is his heir.

6. But, on failure of these (namely the preceptor and the rest,) any one associated in holiness takes the goods; even though sons and other natural heirs exist.

6. In default of those heirs respectively, an associate in holiness is the successor.

7. Are not those, who have entered into a religious profession, unconcerned with hereditary property? since *Vasishṭ'ha* declares, "They, who have entered into another order, are debarred from shares."‡ How then can there be a partition of

7. Objection. They can have no property by inheritance, being pronounced disqualified by *Vasishṭ'ha*.

### ANNOTATIONS.

4. A *yati* or ascetic.] The term 'ascetic' is in this translation used for the *yati* or *sannyasī*; and 'hermit' or 'anchorit' for the *vānaprast'ha*. In former translations, as in the version of *Menu* by Sir William Jones, the two last terms were applied severally to the two orders of devotion.

\* *Subōd'hini*.

† *Subōd'hini*.

‡ *Vasishṭ'ha*, 17. 43. Vide infra. Sect. 10. § 3.

nor any property acquired by themselves ; being incapable of acquisitions, as shown by *Gautama* &c.

their property ? Nor has a professed student a right to his own acquired wealth : for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,\*] are forbidden to him. And, since *Gautama* ordains, that " A mendicant shall have no hoard ;"† the mendicant also can have no effects by himself acquired.

8. Answer. A hermit may have a hoard of necessities for a day or a year ; as intimated by *Yājñavalkya*. And an ascetic and a professed student have clothes and other necessities.

8. The answer is, a hermit may have property : for the text [of *Yājñavalkya*] expresses " The hermit may make a " hoard of things sufficient for a day, a month, six months, or " a year ; and, in the month of *Āswina*, he should abandon [the " residue of] what has been collected."‡ The ascetic too has clothes, books and other requisite articles : for a passage [of the *Vēda*||] directs, that " he should wear clothes to cover his privy parts ;" and a text [of law§] prescribes, that " he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body ; and he possesses also other effects.

9. Succession to such property is regulated.

9. It was therefore proper to explain the partition or inheritance of such property.

## SECTION IX.

### *On the Reunion of Kinsmen after Partition.*

1. *Yājñavalkya* declares the preferable right of the reunited parcener, before the widow &c.

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue.

\* *Bālam-bhatta*.

† *Gautama*, 3. 6.

‡ *Yājñavalkya*, 3. 47. See *Menu*, 6. 15.

|| *Bālam-bhatta*,

§ *Bālam-bhatta*.

CXXXVIII. "A reunited [brother] shall keep "the share of his reunited [coheir,] who is deceased ; "or shall deliver it to [a son subsequently] born."\*

2. Effects, which had been divided and which are again mixed together, are termed reunited. He, to whom such appertain, is a reunited parcener.

2. Explanation of reunited parcener.

3. That cannot take place with any person indifferently ; but only with a father, a brother, or a paternal uncle : as *Vrihaspati* declares. "He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed reunited."

3. Reunion is between certain relations only ; so *Vrihaspati*.

4. The share or allotment of such a reunited parcener deceased, must be delivered by the surviving reunited parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

4. The deceased's share must be given to his posthumous son ; or, if there be none, may be retained by the reunited parcener.

5. The author states an exception to the rule, that a reunited brother shall keep the share of his reunited coheir :

5. A limitation of the preceding rule is contained in the sequel of the text.

CXXXVIIIa. "But an uterine [or whole] brother "shall thus retain or deliver the allotment of his "uterine relation."†

#### ANNOTATIONS.

4. Or, on failure of male issue, he, and not the widow &c. shall take the inheritance.] The singular number is here indeterminate. Therefore, if there be two or more reunited parceners, they shall divide the estate. A maintenance must be allowed to the widow.—*Bālam-bhatta*.

\* *Yājnyawalkya*, 2, 133.

† *Yājnyawalkya*, 2, 138a.

6. Exposition of it. The whole blood has the preference before the half blood,

6. The words "reunited brother" and "reunited coheir" are understood. Hence the construction, as in the preceding part of the text, is this: The allotment of a reunited brother of the whole blood, who is deceased, shall be delivered, by the surviving reunited brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being a reunited parcener, not a half brother who is so, takes the estate of the reunited uterine brother. This is an exception to what had been before said (§ 1.)

7. *Yājñavalkya* delivers rule concerning the participation of brethren of the half blood.

7. Next, in answer to the inquiry, who shall take the succession when a reunited parcener dies leaving no male issue, and there exists a whole brother not reunited, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate.

CXXXIX. "A half brother, being again associated, may take the succession, not a half brother though not reunited: but one, united [by blood, though not by coparcenery,] may obtain the property; and not [exclusively] the son of a different mother."\*

8. Interpreta-

8. A half brother, (meaning one born of a rival wife,)

#### ANNOTATIONS.

6. *A son born subsequently.*] The widow's pregnancy not having been apparent at the time of the partition.

7. "*A half brother, being again associated &c.*"] The text admits of different interpretations besides variations in the reading.—See *Jīmūta-vāhana*, Ch. 11. Sect. 5. § 13.—14.

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\* *Yājñavalkya*, 2. 130.

being a reunited parcener, takes the estate ; but a half brother, who was not reunited, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, reunion is shown to be a reason for a half brother's succession.

tion of the text. The half brother may share if again associated in family partnership.

9. The term "not reunited" is connected also with what follows : and hence, even one who was not again associated, may take the effects of a deceased reunited parcener. Who is he ? The author replies : "one united ;" that is, one united by the identity of the womb [in which he was conceived ;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not reunited in coparcenery.

9. And the whole brother, though not so associated.

10. The term "united" likewise is connected with what follows : and here it signifies reunited [as a coparcener.] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*éva*) understood. Though he be a reunited parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated coheir.

10. For the half brother, though associated, is not sole heir.

11. Thus, by the occurrence of the word "though" (*api*)

11. Thus both

# ANNOTATIONS.

9. The term "not reunited" is connected also with what follows.] It is connected with both phrases, like a crow looking two ways at once. Hence it constitutes, with what follows, another sentence.—*Subódhini*

One united by the identity of the womb.] In like manner, a father, though not reunited with the family, shall take a share of the property of his son ; and a son, though not reunited, shall receive a share of the estate of his father, from a reunited parcener. This, according to the author of the *Subódhini*, is implied : the *Véda* describing the wife as becoming a mother to her husband, who is identified with his offspring. But *Bálam-bhatta* does not allow the inference.

11. The reasons of both rights may subsist at the same instant.] The

may share, for the rights of both may subsist together.

in one sentence ("though not reunited" &c. § 7.) and by the denial implied in the restrictive affirmation (*éva* "exclusively," understood in the other, ("one united may take the property, and not *exclusively* the son of a different mother;") it is shown, that a whole brother not reunited, and a half brother being reunited, shall take and share the estate; for the reasons of both rights may subsist at the same instant.

12. This is confirmed by passages of *Menu*.

12. This is made clear by *Menu*, who, after premising partition among reunited parceners ("If brethren, once divided and living again together as parceners, make a second partition;") declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but his uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally."†

13. Interpretation of the text.

13. Among reunited brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case;) that is, at the time of making a partition, lose or forfeit his share by his entrance into another order [that of a hermit or ascetic,‡] or by the guilt of sacrilege, or by any other disqualification; or if he be dead; his allotment does not lapse, but shall be

#### ANNOTATIONS.

reunion of the half brother in family partnership, and the whole brother's relation by blood.—*Bálam-bhatta*.

13. *They inherit the estate and divide it in equal shares.*] This supposes the brothers of the half blood to belong to the same tribe. But, if they are of different tribes, the shares are four, three, two or one, in the order of the classes; since there is no reason for restricting that rule of distribution.—*Bálam-bhatta*.

\* *Menu*, 9. 210.

*Menu*, 9. 211.—212.

‡ *Bálam-bhatta*.

set apart. The meaning is, that the reunited parceners shall not exclusively take it. The author states the appropriation of the share so reserved: "His uterine brothers and sisters &c." (§ 12.) Brothers of the whole blood, or by the same mother, though not reunited, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it: and that "equally;" not by a distribution of greater and less shares. Brothers of the half blood, who were reunited after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

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SECTION X.

*On exclusion from Inheritance.*

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the reunited parcener.

1. An exception to the succession of heirs is propounded by *Yājñavalkya*.

CXL. "An impotent person, an outcast, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified,] must be maintained; excluding them, however, from participation."\*

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ANNOTATIONS.

1. "An impotent person, an outcast and his issue."] The initial words are transposed by *Jimūta-vākana*, Ch. 5. § 10.

"An impotent person."] Whether naturally so, or by castration.—*Bāḷam-bhūta*.



2. Exposition of the text. Impotent persons, outcasts, madmen, idiots, and persons incurably diseased, are excluded from inheritance.

2. "An impotent person," one of the third gender (or neuter sex.) "An outcast;" one guilty of sacrilege or other heinous crime. "His issue;" the offspring of an outcast. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong. "Blind;" destitute of the visual organ. "Afflicted with an incurable disease;" affected by an irremediable disorder, such as marasmus or the like.

3. So are persons entering into an order of devotion, an unnatural son, a sinner, and one who has lost a sense or a limb: according to *Vasishtha*, *Náreda*, and *Menu*.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus *Vasishtha* says, "They, who have entered into another order, are debarred from shares."\* *Náreda* also declares, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."† *Menu* likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb]."‡

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#### ANNOTATIONS.

*The offspring of an outcast.*] Of one who has not performed the requisite penance and expiation.—*Bálam bhatta*.

3. "*They, who have entered into another order.*" ] Into one of devotion. The orders of devotion are, 1st, that of the professed or perpetual student; 2d, that of the hermit; 3d, the last order or that of the ascetic.—*Bálam bhatta*.

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\* *Vasishtha*, 17. 43.

† *Náreda*, 13. 21.

‡ *Menu*, 9. 201.

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

4. Explanation of the text.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred, if they be not maintained. For *Menu* says, "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power: for he, who gives it not, shall be deemed an outcast."\* "Without stint" signifies 'for life.'

5. The persons above described are excluded from participation; but are entitled to a maintenance, as declared by *Menu*.

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one, already separated from his coheirs, is not deprived of his allotment.

6. The defect must have preceded the partition.

7. If the defect be removed by medicaments or other means [as penance and atonement†] at a period subsequent to partition, the right of participation takes effect, by analogy [to the case of a son born after separation.] "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution."‡

7. If it be removed afterwards, a share must be given, in like manner as a son born after partition takes an allotment.

#### ANNOTATIONS.

5. "A wise man should give all of them food and raiment." Other authorities (as *Dévata* and *Baud'hâyana*) except the outcast and his offspring. That exception not being here made, it is to be inferred, that one, whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained; not one whose crime is inexpiable.—*Bâlam-bhatta*.

6. If their disqualification arose before the division of the property.] The disqualification of the outcast and the rest who are not excluded for natural defects.—*Bâlam-bhatta*.

\* *Menu*, 9. 202.

† *Bâlam-bhatta*.

‡ *Tājnyawalkya*, 2. 123. Vide *supra*, Ch. 1. Sect. 6. § 1.

8. A woman is excluded for like defects.

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9. Sons shall share, if free from similar disqualifications.

9. The disinherison of the persons above described seems to imply disinherison of their sons, the author adds :

So *Yājñyavalkya*.

CXLI. "But their sons, whether legitimate, or "the offspring of the wife by a kinsman, are entitled "to allotments, if free from similar defects."\*

10. Interpretation of the text.

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares ; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Disqualified persons are not to adopt sons.

11. Of these [two descriptions of offspring†] the impotent man may have that termed issue of the wife ; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. Their daughters must be supported, until married ;

12. The author delivers a special rule concerning the daughters of disqualified persons :

as *Yājñyavalkya* declares.

CXLIa. "Their daughters must be maintained "likewise, until they are provided with husbands."‡

13. Explanation of the text.

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

\* *Yājñyavalkya*, 2. 141. † *Bálam-bhatta*. ‡ *Yājñyavalkya*, 2. 141a.

14. The author adds a distinct maxim respecting the wives of disqualified persons :

14. Their wives must be maintained, unless unchaste :

CXLII. "Their childless wives, conducting themselves aright, must be supported ; but such, as are unchaste, should be expelled ; and so indeed should those, who are perverse."\*

so *Yājñavalkya* directs.

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste, they must be expelled ; and so may those, who are perverse. These last may indeed be expelled : but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

15. Exposition of the passage.

## SECTION XI.

### *On the separate Property of a Woman.*

1. After briefly propounding the division of wealth left by the husband and wife, (" Let sons divide equally both the effects and the debts, after the demise of their two parents."†) the partition of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it :

1. Woman's property described by *Yājñavalkya*.

## ANNOTATIONS.

1. *As also any other separate acquisition.* In *Jimīta vāhana's* quotation of the text, (Ch. 4. Sect. 1. § 13.) the conjunctive and pleonastic particles *chaiva* (*cha-éva*) are here substituted for the suppletory term *ádya*. That reading is censured by *Bálam-bhatta*.

\* *Yājñavalkya*, 2. 142.

† *Yājñavalkya*, 2. 118. Vide supra. Ch. 1. Sect. 3. § 1.

CXLIII. "What was given to a woman by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other [separate acquisition,] is denominated 'a woman's property.'"\*

2. Interpretation of the text.

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented [to the bride] by the maternal uncles and the rest [as paternal uncles, maternal aunts, &c.†] at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession," § 34.) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding,‡ are denominated by *Menu* and the rest 'woman's property.'

3. Woman's

3. The term 'woman's property' conforms, in its import,

#### ANNOTATIONS.

2. *Before the nuptial fire.*] Near it.—*Subódhini*.

*On account of supersession.*] Supersession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations.—*Subódhini*.

*Property which she may have acquired by inheritance.*] The commentator, *Bálam-bhatta*, defends his author against the writers of the eastern school (*Jimáta-váhana* &c) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'woman's property.'—See *Jimáta-váhana*, Ch. 4. and Ch. 11. Sect. 1. § 8.

3. *The term 'woman's property' is not technical.*] This is contrary to the doctrine of *Jimáta-váhana*, Ch. 4.

\* *Yágyawalkya*, 2. 143.

† *Bálam-bhatta*,

‡ Vide Ch. 1. Sect. 1. § 8.

with its etymology, and is not technical : for, if the literal sense be admissible, a technical acceptance is improper.

property is not a technical expression.

4. The enumeration of six sorts of woman's property by *Menu* ("What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father, are denominated the sixfold property of a woman ;"\*) is intended, not as a restriction of a greater number, but as a denial of a less.

4. *Menu's* enumeration of six sorts denies a less number, not a greater.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by *Cātyāyana* : "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as women's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house [to her husband's dwelling,] is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her

5. *Cātyāyana* defines those several sorts.

#### ANNOTATIONS.

4. "Bestowed in token of affection or respect."] This passage is read differently in the *Retnācāra* and by *Jimāta-vāhana* (Ch. 4. Sect. 1. § 4.) It is here translated conformably with *Bālam-bhatta's* interpretation grounded on the subsequent text of *Cātyāyana* (§ 5.) ; where two reasons of an affectionate gift are stated : one, simple affection ; the other, respect shown by an obeisance at the woman's feet.

5. "From her father's house."] The *Retnācāra* and *Chintāmani* read "from the parental abode."—See *Jimāta-vāhana*, Ch. 4. Sect. 1. § 6.

"Offered to her as a token of respect."] Given to her at the time of making an obeisance at her feet.—*Smṛiti-chandricā*.

through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present. That, which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

6. Other sorts noticed

by *Yājñawalkya*.

6. Besides [the author says,]

CXLIV. "That which has been given to her by her kindred; as well as her fee or gratuity, or any thing bestowed after marriage."\*

Explanation of his text.

6a. What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. *Cātyāyana's* definition of a gift subsequent.

7. It is said by *Cātyāyana*, "What has been received by a woman from the family of her husband at a time posterior

### ANNOTATIONS.

"Denominated an affectionate present"] This reading is followed in the *Smṛiti-chandricā*, *Īcramitródaya* &c. But the *Retnācara*, *Chintāmani*, and *Vivāda-chandra* read 'denominated an acquisition through loveliness;' *lāvanyārjitam* instead of *prīti-dattam*.

"From her brother or from her parents."] The *Cālpataru* reads "from her husband."—See *Jīmāta-vāhana*, Ch. 4. Sect. 2. § 21.

"Termed a kind gift."] So the commentary of *Bālam-bhatta* explains *saudāyica*, as bearing the same sense with its etymon *sudāya*. He censures the interpretation which *Jīmāta-vāhana* has given (Ch. 4. Sect. 1. § 22.)

6. The gratuity, for the receipt of which a girl is given in marriage.] This relates to a marriage in the form termed *Asura* or the like.—*Bālam-bhatta*.

7. "Similarly received from the family of her father."] The *Retnācara*

\* *Yājñawalkya*, 2. 144.

to her marriage, is called a gift subsequent ; and so is that, which is similarly received from the family of her father.” Exposition of the passage.  
 It is celebrated as woman's property : for this passage is connected with that which had gone before. (§ 5.)

8. A woman's property has been thus described. The author next propounds the distribution of it : 8. A woman's property goes to her kindred.

CXLIVa. “ Her kinsmen take it, if she die without issue.”\*

9. If a woman die “ without issue ;” that is, leaving no progeny ; in other words, having no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son ; the woman's property, as above described, shall be taken by her kinsmen ; namely her husband and the rest, as will be [forthwith†] explained. 9. Her husband or other heirs inherit on failure of issue.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. 10. The heirs are different, according to the form of the marriage ceremony :

CXLV. “ The property of a childless woman, “ married in the form denominated *Brahma*, or in any “ of the four [unblamed modes of marriage,] goes to “ her husband : but, if she leave progeny, it will go “ to her [daughter's] daughters : and, in other forms as shown by Yājñavalkya.

#### ANNOTATIONS.

reads ‘from her own family ;’ *Jimūta-vāhana*, ‘from the family of her kindred.’—See *Jimūta-vāhana*, Ch. 4. Sect 1. § 2.

\* *Yājñavalkya*, 2. 111a.

† *Bāṭam-bhatta*.



“ of marriage [as the *Asura* &c.] it goes to her father  
 “ [and mother, on failure of her own issue.”\*]

11. Explanation of the text. In four unblamed forms of marriage, the husband is first entitled to the succession: after him, his nearest of kin; in the four other forms of marriage, the parents inherit; & first the mother; after her, the father: failing them, their next of kin.

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated *Brahma*, *Daiva*, *Arsha* and *Prájápatya*, the [whole†] property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (*sapindas*) allied by funeral oblations. But, in the other forms of marriage called *Asura*, *Gánd’harba*, *Rácshasa* and *Paisácha*; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained,‡) on the mother, who is virtually exhibited [first] in the elliptical phrase *pitrígámi* implying ‘ goes (*gach’hati*) to both parents (*pitarau*;) that is, to the mother and to the father.’ On failure of them, their next of kin take the succession.

12. In every form of marriage, if there be issue, daughters inherit; or granddaughters.

12. In all forms of marriage, if the woman “ leave progeny;” that is, if she have issue; her property devolves on her daughters. In this place, by the term “ daughters,” grand-daughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage: “ the daughters share the residue of their mother’s property, after payment of her debts.”||

#### ANNOTATIONS.

11. *Dying without issue as before stated.*] Without any of the five descendants above-mentioned (§ 9.)—*Bálam-bhatta*.

12. *In all forms of marriage.*] Several variations in the reading of this

\* *Yájnyawalkya*, 2. 145.

† *Bálam-bhatta*.

‡ Sect. 3.

|| *Yájnyawalkya*, 2. 118. Vide supra. Ch. 1. Sect. 3. § 8.

13. Hence, if the mother be dead, daughters take her property in the first instance : and here, in the case of competition between married and maiden daughters, the unmarried take the succession ; but, on failure of them, the married daughters : and here again, in the case of competition between such as are provided and those who are unendowed, the unendowed take the succession first ; but, on failure of them, those who are endowed. Thus *Gautama* says " A woman's property goes to her daughters unmarried, or unprovided ;"\* ' or provided,' as is implied by the conjunctive particle in the text. " Unprovided" are such as are destitute of wealth or without issue.

13. First the unmarried daughter; next the married one, who is unprovided : lastly one who has a provision.

*Handwritten notes:*  
13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

14. But this [rule, for the daughter's succession to the mother's goods,†] is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of *Gautama* : " The sister's fee belongs to the uterine brothers : after [the death of] the mother."‡

14. But brothers inherit the fee or gratuity ; as ordained by *Gautama*.

15. On failure of all daughters, the grand-daughters in the female line take the succession under this text : " if she leave progeny, it goes to her [daughter's] daughters."||

15. After daughters, grand-daughters in the female line inherit.

# ANNOTATIONS.

passage are noticed by *Bālam-bhatta* : as *sarvēśhw api*, or *sarvēśhw ēva*, or *sarvēśhw*. There is only a shade of difference in the interpretation.

11. " After the death of the mother." This version is according to the interpretation given in the *Subōd'hini* ; which agrees with that of the scholiast of *Gautama*, the *Cālpataṇu* and other authorities. But the text is read and explained differently by *Jimātū-rāhāna*, (Ch. 4. Sect. 3. § 27.)

*Bālam-bhatta* understands by the term 'mother,' in this place, the woman herself, or in short the sister, after whose death her fee or nuptial gratuity goes to her brothers.

\* *Gautama*, 28. 22. Vide supra. C. 1. Sect. 3. § 11. † *Bālam-bhatta*.

‡ *Gautama*, 28. 22.

|| Vide § 10 & 12.

16. They share the allotments of their respective mothers. So *Gautama* directs,

16. If there be a multitude of these [grand-daughters\*] children of different mothers, and unequal in number, shares should be allotted to them through their mothers, as directed by *Gautama*: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."†

17. But if there be daughters, a trifle only is to be given to the grand-daughters. So *Menu*,

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So *Menu* declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."‡

18. In default of those grand-daughters; the sons of daughters inherit: as hinted by *Náreda*,

18. On failure also of daughter's daughters, the daughter's sons are entitled to the succession. Thus *Náreda* says, "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue."|| For the pronoun refers to the contiguous term "daughters."

#### ANNOTATIONS.

16. *Children of different mothers, and unequal in number.*] Where the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a third, three; how shall the maternal grandmother's property be distributed among her grand-daughters? Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (Ch. 1. Sect. 5.)—*Subódhini*.

18. "Their male issue."] Several variations in the reading of the last term are noticed in the commentary of *Bālam-bhatta*; making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

*The pronoun refers to the contiguous term.*] *Jimūta-vāhana*, citing this passage for the succession of sons rather than of grandsons, seems to have understood the pronoun as referring to the remoter word 'mother.'—See *Jimūta-vāhana*, Ch. 4. Sect. 2. § 13.

\* *Bālam-bhatta*.

† *Menu*, 9. 193.

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‡ *Gautama*, 28. 15.

|| *Náreda*, 13. 1.

19. If there be no grandsons in the female line, sons take the property : for it has been already declared, "the [male] issue succeeds in their default."\* *Menu* likewise shows the right of sons, as well as of daughters, to their mother's effects : "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."†

19. After them, the male issue succeeds. This is confirmed by *Menu*.

20. 'All the uterine brothers should divide the maternal estate equally ; and so should sisters by the same mothers.' Such is the construction : and the meaning is, not that 'brothers and sisters share together,' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed : but the conjunctive particle

20. Exposition of the text. The brothers & sisters do not share together ; but successively

### ANNOTATIONS.

19. "*Let all the uterine brothers . . . equally divide.*" In the *Calpataru* the text is read "let all the sons by the same mother divide : " *sarvé putráh sahódaráh* instead of *saman sarvé sahódaráh*.

20. *Since the abridged form of the conjunctive compound has not been employed.* Nouns coalesce and form a single word denominated *dvandwa* or conjunctive compound, when the sense of the conjunctive particle (*cha* 'and') is denoted.—*Pāṇini*, 2. 2. 29. Vide supra. Sect. 3. § 2.

The import of the particle, here intended, is either *reciprocation* (*itarétara*) explained to be 'the union, in regard to a single matter, of things specifically 'different, but mutually related, and mixed or associated, though contrasted ;' or it is *cumulation* (*samāhāra*) explained as 'the union of such things, by an association, in which contrast is not marked.' The other senses of the conjunctive particle are *assemblage* (*samuchchaya*) or 'the gathering together of two or more 'things independent of each other, but assembled in idea with reference to some 'common action or circumstance ;' and *superaddition* (*anuvāchaya*) or 'the connexion of a secondary and unessential object with a primary and principal one, 'through a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particle, there is not such a connexion of the terms as authorizes their coalition to form a compound term.—*Caiyata*, *Padamanjari*, &c.

\* *Yājñavalkya*, 2. 118. Vide supra. Ch. 1. Sect. 3. § 12.

† *Menu*, 9. 192.

(*cha*) is here very properly used with reference to the person making the partition ; as in the example, *Dēvadatta* practises agriculture, and so does *Yajnyadatta*.

21. No deduction for the eldest brother. The whole blood excludes the half blood.

21. "Equally" is specified (§ 19.) to forbid the allotment of deductions [to the eldest and so forth]. The whole blood is mentioned to exclude the half blood.

22. The step-daughter may inherit, if she be of a superior tribe.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So *Menu* declares : "The wealth of a woman, which has been in any manner given to her by her father, let the *Brahmani* damsel take ; or let it belong to her offspring."\*

So *Menu* declares.

23. This intends any superior tribe.

23. The mention of a *Brahmani* includes any superior class. Hence the daughter of a *Cshatriya* wife takes the goods of

### ANNOTATIONS.

If *reciprocation*, as above explained, were meant to be indicated in the text of *Menu* (§ 19.), the word *bhrātrī* "brother" would have been used, inflected however in the dual number to denote 'brother and sister' (*Pānini*, 1. 2. 68.) ; or else 'children,' or some generic term, would have been employed in the plural (*Pānini*, 1. 2. 64.) But the text is not so expressed. Consequently *reciprocation* is not indicated.—*Subhādhini* and *Pāṇini*. *Bhāṭṭa*.

*The conjunctive particle is here very properly used.* [ 'It is employed in one of the acceptations, which do not admit of nouns coalescing in a compound term : namely in that of superaddition, as in the example which follows. 'D. practises agriculture ; and so does Y.' 'Brothers share equally ; so do sisters.'

*With reference to the person making the partition.* [ 'Another reading of this passage is noticed in the commentary of *Bāṭṭa* : "with the import of superaddition relatively to the person who makes the partition ;" *vibhāga-cartritwēn'ānwāchayēn'āpi*, instead of *vibhāga-cartritw'ānwāyēn'āpi*.

23. Hence the daughter of a *Cshatriya* wife takes the goods of a childless

\* *Menu*, 9. 198.

a childless *Vaisya* : [and the daughter of a *Brahmani*, *Cshatriya* or *Vaisya* inherits the property of a *Sudra*.\*]

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For *Gautama* says, "They, who share the inheritance, must pay the debts:"† and the grandsons are bound to discharge the debts of their paternal grandmother; for the text expresses "Debts must be paid by sons and son's sons."‡

24. After sons, grandsons inherit.

25. On failure of grandsons also, the husband and other relatives above-mentioned|| are successors to the wealth.

25. Next the husband and other heirs, as above mentioned.

26. On occasion of treating of woman's property, the author adds something concerning a betrothed maiden :

26. A passage of *Yājñavalkya* concerning an affianced damsel.

CXLVI. "For detaining a damsel, after affiancing her, the offender should be fined, and should also "make good the expenditure together with interest."§

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence; and according to [the rank of the parties, their qualities,¶ and] other circumstances. This is applicable, if

27. Interpretation of the text. One, who betrothes a damsel and afterwards retracts the engagement without cause, shall be fined.

#### ANNOTATIONS.

*Vaisya*.] This inference is contested by *Sricrishna* in his commentary on the *Dāya-bhāga* of *Jimāta-vāhana*.

24. *The grandsons are bound to discharge the debts.*] "Since one text declares them liable for the debts; and the other provides, that the debts shall be paid by those who share the inheritance; it follows, that they share the heritage.—*Subōd'hini* &c.

\* *Subōd'hini* and *Bālam-bhatta*.

† *Yājñavalkya*, 2. 50.

§ *Yājñavalkya*, 2. 116.

‡ *Gautama*, 12. 32.

|| § 9.—11.

¶ *Bālam-bhatta*.

there be no sufficient motive for retracting the engagement. But, if there be good cause, he shall not be fined, since retraction is authorized in such a case. "The damsel, though betrothed, may be withheld, if a preferable suitor present himself."\*

28. The expenses incurred must be made good,

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, [or by his father or guardian,†] for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

19. If the betrothed damsel die, the bridegroom's presents are returned to him ;

29. Should a damsel, any how affianced, die before the completion of the marriage, what is to be done in that case ? The author replies,

as directed by  
*Yājñyavalkya*,

CXLVIA. "If she die [after troth plighted,] let "the bridegroom take back the gifts which he had "presented ; paying however the charges on both "sides."‡

30. Exposition  
of the text,

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity, which had been previously given by him [to the bride,] "paying however the charges on both sides : " that is, clearing or discharging the expense which has been incurred both by

#### ANNOTATIONS.

29. *Any how affianced.*] By a religious rite, or by taking of hands, or in any other manner.—*Bālam-bhatta*.

30. *Clearing or discharging.*] The common reading of the passage is *viganya* "accounting ;" but *Bālam-bhatta* rejects that reading, and substitutes *vigamyā* "removing" or 'discharging.'

\* *Yājñyavalkya*, 1. 65.

† *Bālam-bhatta*.

‡ *Yājñyavalkya*, 2. 146a.

the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, [or her paternal uncle,\*] or other relations; as well as the property, which may have been regularly inherited by her. For *Baud'háyana* says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father."

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her life-time, and although she have issue:

31. A husband, in distress, using his wife's property, is not liable to make it good.

CXLVII. "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."†

So *Yājñavalkya* declares.

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband, being desti-

32. Explanation of the passage.

#### ANNOTATIONS.

*He may take the residue.*] The meaning is this - after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides, in contemplation of the marriage, let the residue be delivered to the bridegroom.—*Subód'hini*.

32. *Is not liable to restore it.*] He is not positively required to make it good.—*Bálam bhatta*.

\* *Bálam bhatta*.

† *Yājñavalkya*, 2. 117.



tute of other funds and therefore taking his wife's property, is not liable to restore it. But, if he seize it in any other manner [or under other circumstances,] he must make it good.

33. No other person, but her husband, may take her property. *Náreda* and *Manu* denounce punishment against the offender.

33. The property of a woman must not be taken in her life-time by any other kinsman or heir but her husband : since punishment is denounced against such conduct : (" Their kinsmen, who take their goods in their life-time, a virtuous king should chastise by inflicting the punishment of theft :")\* and it is pronounced an offence ; " Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves : they, who do so, are degraded from their tribe."†

34. A present on occasion of a second marriage

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1.) The author describes such a present :

described by *Yājñyavalkya*.

CXLVIII. " To a woman, whose husband marries " a second wife, let him give an equal sum, [as a compensation] for the supersession, provided no separate " property have been bestowed on her : but, if any " have been assigned, let him allot half."‡

35. Interpretation of the text.

35. She is said to be *superseded*, over whom a marriage

#### ANNOTATIONS.

35. *Here the word half does not intend an exact moiety.* The term, as it stands in the original text, is not neuter, that it should signify an equal part or exact moiety : but it is masculine and signifies portion in general. (*Amera*, 1. 1. 2. 17) — *Subód'hini*.

\* *Náreda*, as cited by *Bálam-bhatta* ; but not found in his institutes.

† *Manu*, 9. 200. Vide *supra*. Ch. 1. Sect. 4. § 19.

‡ *Yājñyavalkya*, 2. 118.

is contracted. To a wife so superseded, as much should be given on account of the supersession, as is expended [in jewels and ornaments, or the like,\*] for the second marriage : provided separate property had not been previously given to her by her husband ; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. † Here the word ‘half’ (*ardd’ha*) does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

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## SECTION XII.

### *On the Evidence of a Partition.*

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt.

1. *Yājñawalkya* specifies the evidence of partition if doubted.

CXLIX. “When partition is denied, the fact of  
“it may be ascertained by the evidence of kinsmen,  
“relatives and witnesses, and by written proof, or by  
“separate possession of house or field.”†

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## ANNOTATIONS.

*Bālam-bhatta*, citing a passage of the *Malūbhāṣya* to prove that *ardd’ha* in the masculine signifies half ; interprets the quotation from the *Ameṣa-Cōsha* (1. 1. 2. 17.) as exhibiting *ardd’ha*, masculine and neuter, in the sense of moiety. He therefore rejects the foregoing explanation, and considers the word ‘half’ as employed in the text for an indefinite sense.

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\* *Bālam-bhatta*.

† *Yājñawalkya*, 2. 119.

2. Explanation of the text.

2. If partition be denied or disputed, the fact may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described;\* or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house and field.

3. Other proofs of separation are stated by *Náreda*.

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacraments † and other religious duties performed separately from them, are pronounced by *Náreda* to be tokens of a partition. "If a question arise among coheirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty of unseparated brethren is single. When partition indeed has been made, religious duties become separate for each of them."‡

4. And again in a subsequent passage.

4. Other signs of previous separation are specified by the same author: "Separated not unseparated brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."||

#### ANNOTATIONS.

2. "*By the testimony of kinsmen.*" Or rather strangers belonging to the same tribe with the parties.—*Bálam-bhatta*.

3. "*By the record of the distribution.*" Another reading is noticed by *Bálam-bhatta*: "by occupancy or by a writing;" *bhóga-léc'hyéna* instead of *lhága lec'hyéna*.—See *Jímúta-váhana*, Ch. 14. § 1.

\* In the preceding Book on Evidence.

† *Menu*, 3. 69.

‡ *Náreda*, 13. 36. - 37.

|| *Náreda*, 13. 39.

FINIS.

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A  
SYNOPSIS  
OR  
GENERAL SUMMARY  
OF THE  
HINDU LAW OF INHERITANCE  
ACCORDING TO THE MITÁCSHARÁ.

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THE Hindu Law of Inheritance according to the *Mitácschará* Law may be classified under the three following heads :—

I.—The rules of succession to the property of a deceased male owner.

II.—The rules of succession to *Stridhaná* property.

III.—The rules of exclusion from Inheritance.

The rules of succession to the property of a deceased male owner may be sub-divided under the following heads :—

1st.—Partition of Heritage amongst various descriptions of sons and their descendants.

2nd.—The rights of persons to inherit the estate of one who leaves no male issue.

3rd.—The rules of succession to the property of a hermit or of an ascetic.

*Head First.*

I.—The partition of heritage is now propounded by the image of holiness.

Chap. I. Sec. I.  
V. 2. The term heritage (*dāya*) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

Chap. I. Sec. I.  
V. 3. It is of two sorts : unobstructed (*apratibandha*), or liable to obstruction (*sapratibandha*.) The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons : and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue : and thus the actual existence of a son and the survival of the owner are impediments to the succession ; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother.

Chap. I. Sec. I.  
V. 4. Partition (*vibhāga*) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

Chap. I. Sec. I.  
Vs. 6 and 7. Thus the terms “partition” and “heritage” being defined, the next question that naturally suggests itself is—what is the nature of the subject of partition, or in other words “Does property” (which is the subject of partition) “arise from partition?” or does partition of pre-existent property take place? and whether the right of property is of sacred or conventional origin, *i. e.*, whether deducible from the sacred institutes or from temporal proof.

Chap. I. Sec. I.  
V. 9. The right of property is not of sacred origin but merely a conventional notion.

Chap. I. Sec. I.  
V. 27. “It is a settled point that property in the paternal or ancestral estate is by birth,” *i. e.*, the partition of pre-existent *property* takes place, and the *property* does not arise from partition.

Chap. I. Sec. II.  
V. 2. There are four periods of partition : 1st.—When a father wishes

partition. *2nd.*—When a father while living is in different to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons ; at which period a partition is admissible at the option of sons against the father's wish. *3rd.*—When the partition takes place after the death of the father, and *4th.*—When a partition of the estate of a deceased grandfather takes place at the option of the son against the will of the father, although the father retains his worldly affection, and the mother is capable of bearing more sons.

Chap. I. Sec. II.  
V. 7.

Chap. I. Sec. III.  
V. 1.

Chap. I. Sec. VI.  
V. 9.

When the partition takes place merely at the will of the father, he may make an unequal distribution amongst his sons, if he himself be the acquirer of the property which is divided.

Chap. I. Sec. II.  
Vs. 3 and 6.

In all other cases unequal partition is not allowable.

Chap. I. Sec. II.  
V. 7.

When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participant of shares equal to those of sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her : " Or if any had been given, let him assign the half." But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by *Apastamba* : " The furniture in the house and her ornaments are the wife's [property.]" There are certain properties which are not liable to partition.

Chap. I. Sec. II.  
Vs. 9 and 10.

That, which had been acquired by the coparcener himself without any detriment to the goods of his father and mother ; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the coheirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among his sons, who recovers it with the acquiescence of the rest, shall not

Chap. I. Sec. IV.  
Vs. 2 and 3.

give up to the brethren or other coheirs : the person recovering it shall take such property. If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren.

Chap. I. Sec. IV.      What is acquired through science &c. need not be divided.  
V. 5.

Chap. I. Sec. IV.      Wearing apparels, vehicles, &c. are not divisible.  
Vs. 16 to 22.

Chap. I. Sec. IV.      It is settled, that whatever is acquired at the charge of the  
Vs. 29 and 31.      patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of *Vasishṭha*. "If, among them, who has made an acquisition, may take a double portion of it." Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place ; and a double share is not allotted to the acquirer.

Chap. I. Sec. VI.      But if a posthumous son be born after partition, of a wife  
V. 2.      equal in class, he shall share the distribution.

Chap. I. Sec. VI.      When a partition takes place during the life-time of the father,  
V. 4.      the son born after such distribution shall alone take his father's

Chap. I. Sec. VI.      share with all subsequent acquisitions. But this does not hold  
V. 7.      good with respect to sons who have reunited again with the father after partition. In that case, the division must be equal.

Chap. I. Sec. VII.      When partition takes place after the death of the father, the  
V. 2.      mother to whom no separate property had been given shall take a share equal to that of a son : But where separate property had been given she is entitled to a moiety.

Chap. I. Sec. VII.      By the brethren, who make a partition after the decease of  
V. 4.      their father, the uninitiated brothers should be initiated at the charge of the whole estate.

Chap. I. Sec. VII.      Regarding unmarried sisters, the author states a different rule :  
V. 5.      "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share."

Chap. I. Sec. IX.      Properties which are discovered after partition as having been

withheld from the operation of division from some cause or other shall be again equally divided.

When a partition takes place between an adopted son and an *aurasa* son, the share of the adopted son is one-fourth of that of the *aurasa* son. Chap. I. Sec. XI. V. 24.

A son begotten by a *Subra* on a female slave receives half as much as is allotted to a son of a wedded wife. But if there be no such sons, he receives the whole property. Chap. I. Sec. XII.

### *Head Second.*

On failure of sons and grandsons or (great-grandsons) a wedded wife, being chaste, takes the whole estate of a man, who, being separated from his coheirs and not subsequently reunited with them, dies leaving no male issue. Chap. II. Sec. I. V. 39.

On failure of the widow, daughters succeed. Where the competition is between an unmarried and married daughter, the former gets the preference, and where the competition is between a rich and an indigent daughter, the latter succeeds first. Chap. II. Sec. II. V. 1. Vs. 3 and 4.

Next in order of succession is the daughter's son. Chap. II. Sec. II. V. 6.

On failure of all these, the mother succeeds, and after her the father. Chap. II. Sec. III. V. 5.

Next in order of succession are brothers. Amongst brothers, those of the whole blood succeed in the first instance, and then those by different mothers. Chap. II. Sec. IV. V. 1. Vs. 5 and 6.

After them the brothers' sons and in whose default (brothers' grandsons) succeed in the same order also. Chap. II. Sec. IV. V. 7.

Then the order of succession is carried on thus : Chap. II. Sec. V. V. 1.

1. Paternal grandmother.

2. Paternal grandfather.

3. Uncles.

4. Their sons, and after them (uncle's grandsons.)

Chap. II. Sec. V. V. 4.





II.—Next the rules of succession to *Stridhaná* property are to be considered.

That, which was given by the father, by the mother, by the husband, or by a brother ; and that, which was presented (to the bride) by the maternal uncles and rest (as paternal uncles, maternal aunts, &c.) at the time of the wedding, before the nuptial fire ; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, (“To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession,” § 34.) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding, are denominated by *Menu* and the rest ‘woman’s property.’

Chap. II. Sec. XI.  
V. 2.

The heirs to a *Stridhaná* property are in the following mode ; daughter, daughter’s daughter, daughter’s son, son, son’s son ; and in their default the husband and his kinsmen, if the marriage of the deceased had taken place according to any of the four modes of marriage denominated *Brahma*, *Daiva*, *Arsha* and *Prájápatya*. But if her marriage had been celebrated according to any of the forms denominated *Asura*, *Gánd’harba*, *Ráceshasa* and *Paisácha*, then after son’s son comes the mother and after her the father.

Chap. II. Sec. XI.  
Vs. 9, 10 and 11.

Amongst daughters the unmarried is preferred to the married and the “unprovided” to the “provided.” “The provided” are such as are destitute of wealth or without issue.

Chap. II. Sec. XI.  
V. 13.

If there be a number of daughter’s daughters, shares are allotted according to their different mothers.

Chap. II. Sec. XI.  
V. 16.

If a damsel who is betrothed dies before her death, the gifts made by her intended bridegroom may be taken by him, but her uterine brother receives those that were given to her by any other relative.

Chap. II. Sec. XI.  
Vs. 29, 30 and 31.

None has the power to interfere with a woman’s *Stridhaná* property except the husband who can appropriate it only on the

Chap. II. Sec. XI.  
V. 32.

following contingencies :—When distressed by famine, or for the performance of a duty, or during illness or while under restraint.

III.—Thus the rules regarding succession to *Stridhaná* property being considered, the next subject, according to the order laid down, treats of rules of exclusion from inheritance.

Chap. II. Sec. X.    An impotent person, an outcast, and his issue, one lame, a  
Vs. 1 and 3.        madman, an idiot, a blind man, a person afflicted with an incur-  
able disease or one who has entered into an order of devotion,  
an enemy to his father, a sinner in an inferior degree and a  
person deaf, dumb or wanting any organ, are debarred from the  
share of the heritage, but are nevertheless entitled to mainte-  
nance.

Chap. II. Sec. X.    Their wives, if chaste, and daughters until disposed of in mar-  
Vs. 13 and 15.        riage are also to be maintained.

Chap. II. Sec. X.    The sons of such persons as enumerated above, if any, (ex-  
V. 9.                cepting the son of an outcast) are not to be excluded from in-  
heritance.

Chap. II. Sec. X.    If at any time after division the cause of their exclusion ceases  
V. 7.                or removed, their right revives.

Chap. II. Sec. X.    The existence of any one of these causes before partition is a  
V. 6.                bar to their participation, but if a person after division be affected  
with any one of these disqualifications, he is not to be divested of  
his right.

# ABBREVIATIONS

## USED IN THE APPENDIX.



ABBREVIATION.	NAME OF WORK.
B. L. R. a. c. ...	Bengal Law Reports, Appellate Civil Cases.
„ „ p. c. ...	„ „ „ Privy Council Cases.
Bom. H. C. Rep.	Bombay High Court Reports.
Borr. ...	Borrodaile's Reports of the Bombay Sud- der Court.
Bourke's Rep. ...	Bourke's Reports of Cases decided in the High Court, Calcutta.
East's Notes, ...	MSS. Notes of Cases determined in the Supreme Court, Calcutta, by Sir E. H. East, C. J.
Fulton, ...	Fulton's Reports of Cases decided in the Supreme Court, Calcutta.
Hay's Rep. ...	Hay's High Court Reports.
H. C. Rep. N. W. P.	High Court Reports, North-Western Provinces.
Ind. Jurist, ...	Indian Jurist.
Mad. H. C. Rep.	Madras High Court Reports.
Mad. S. D. ..	Madras Sudder Decisions.
Macn. Cons. H. L.	Macnaghten's Considerations in the Hindu Law.
Mac. H. L. ...	Macnaghten's Hindu Law.
M. I. App. ...	Moore's Indian Appeals.
Morly, ...	Morly's Digest.
N. W. P. Rep. ...	North-Western Provinces Reports.
Punjab Record. ..	Punjab Chief Court Reports.
Ratt. Rep. ..	Rattigan's Leading Cases on Hindu Law.

- Sel. Rep.... ... Select Reports of the Sudder Dewanny  
Adawlut, Calcutta, Vols. 1 to 4, new  
edition, 5 to 7, old edition, pages marked.
- Sel. Rep. N. W. P. Select Reports, North-Western Provinces.
- Sevestre Rep. ... Sevestre's High Court Reports, August to  
December, 1863.
- S. D. Cal. ... Decisions of the Sudder Dewanny, Cal-  
cutta.
- S. H. C. Rep. ... Sutherland's High Court Reports, Janu-  
ary to July, 1864.
- S. F. Ruling, ... Sutherland's Full Bench Rulings.
- W. R. ... Sutherland's Weekly Reporter, Civil Rul-  
ings.
- „ P. C. ... „ „ Privy Council Cases.
- Wym. Rep. ... Wyman's Civil and Criminal Reporter.

# APPENDIX,

*Containing a Digest of Reported Cases on Hindu Law bearing upon the subjects treated by the Author.*

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## ABSENTEE.

*See 'Evidence,' No. 1.*

## ADOPTED SON.

*See 'Inheritance,' No. 3.*

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## ADOPTION.

*I.—Right of adoption as regards giver and receiver.*

*II.—Person to be adopted.*

*(a) General.*

*(b.) Relation.*

*(c.) Age.*

*III.—Form to be observed.*

*I.—Right of adoption as regards giver and receiver.*

1. An adoption by a widower is valid according to Hindu Law. *Nagappa Adapa, v. Subba Sastry*. 28th April 1865. 2 Mad. H. C. Rep. p. 367. 1 Ratt. Rep. p. 134.

2. According to Bengal and Benares Schools, adoption by widow, without authority from her husband, is illegal, though she may have obtained the consent of her husband's heirs. *Rajah Shumshere Mull, v. Rancee Dilraj Kour*. 21st Jan. 1816. 2 Sel. Rep. p. 216. 1 Ratt. Rep. p. 54.

3. But in the South of India the authority of husband's kindred, is sufficient. *Collector of Madura, v. Mutu Ramalinga Sathupathy*, 21st May 1868, 1 B. L. R., p. c., p. 1. 10 W. R.,

p. c., p. 17. 1 Ratt. Rep. p. 61; *Ranee Saragamy Nachiar*, v. *Streemathoo Heraniah Gurbah*. 1 Morley, p. 13. *Arundadi Ammal*, v. *Kuppanmal*. 3 Mad. H. C. Rep., p. 283.

4. In Bombay it was held, that a widow could adopt if she obtained permission of the caste, and the sanction of the ruling power, provided she adopted the nearest of kin of her late husband. *Brij Bhookanjee Muharaj*, v. *Sree Gokooloostusjee Muharaj*. 5th Nov. 1817. 1 Borr. p. 181.

5. In Bombay a widow can adopt, without injunction of her husband, the son of her husband's brother, but not in any other case. *Hulbut Rao Mankur*, v. *Gobind Bulwant Rao Mankur*. 1st Sept. 1823. 2 Borr. p. 75. 1 Ratt. Rep. p. 81.

6. In *Gobind Soonderee Dabia*, v. *Jugodumba Dabia*. 29th May 1865. 3 W. R. p. 66. It was held by the Calcutta High Court, that a Hindu woman, taking no steps to adopt until the death of the last male member of her husband's family, forfeits her right to adopt. But, in an earlier case (24th March 1814) it was held that a power of adoption granted by a Hindu to his wife, may be exercised by her at any time after her husband's death, and accordingly, an adoption 15 years after the husband's death, was held to be valid. East's Notes, Case 14.

7. A Hindu widow cannot, on the death of one adopted son, adopt another unless she has received special permission from her husband to do so. *Gournath Chowderi*, v. *Anopoorua Chowdrian*. 27th April 1852. S. D. Cal. p. 332.

8. A widow being a minor, may adopt a son under instructions from her late husband, though her husband's brothers are living. *Haradhun Rai*, v. *Biswanath Rai*. 19th March 1815. 2 Mac II Law. p. 180.

9. Under the Hindu Law current in Mithila, a widow has power to adopt a son in the *Kritima* form with or without her husband's consent; but such son would not by virtue of such adoption lose his position in his own family; nor would he succeed to the property left by the husband of his adoptive

mother, but he would be considered her son and entitled to succeed to her only. *Collector of Tirhoot, v. Huropershad Mohunt*. 29th May 1867. 7 W. R. p. 500; *Shibokooree, v. Joogun Singh*. 8 W. R. p. 155.

10. Verbal permission is in general sufficient *Soonder Koomaree Dabea, v. Gudadhurpersad Tewary*. 15th Feb. 1848. 7 M. I. A. p. 54. 1 Ratt. Rep. p. 81.

11. The Hindu Law does not prevent a leper from giving his son in adoption. *Anundmohun Mozumder, v. Gobindchander Mozumder*. 22nd April 1864. S. II. Rep. p. 173. Vide 2 Mac. H. L., Case XX. and XXI. contra.

*II.—Person to be adopted.*

*(a) General.*

12. According to the doctrine of the Supreme Court of Calcutta, the High Court of Madras, and the High Court of Bombay, and the Chief Court of Punjab, the adoption of an only son of an advanced age, and even after tonsure, is improper, but not invalid *Joymonce Dossee, v. Sibosoondery Dossee*. 28th March 1837. 1 Fulton p. 73. *Chinna Gaundan, v. Kumara Gaundan*. 10th Nov. 1862. 1 Mad. H. C. Rep. p. 54; *Raje Vyankatray, v. Jayavantray*. 4th Sept. 1867. 4 Bom. H. C. Rep. a. c., p. 191. 1 Ratt. Rep. p. 138.

13. But it has been otherwise held in a recent decision of High Court of Bengal. *Rajah Upender Lall Roy, v. Rancee Prasano Mayi*. 9th Sept. 1868. 1 B. L. R. a. c., p. 221; similar doctrine was also held by the Bengal Sudder Court in. *Nund Ram, v. Kashi Pandeh*, 30th June 1832. 3 Sel. Rep. p. 310.

14. The adoption of a second son, in life-time of the first, is wholly illegal. *Rungama, v. Atchama*. 29th Feb. 1848. 4 M. I. A. p. 1; *Monmothonnath Day, v. Onathnath Day*. 20th April 1865. Bourke Rep. p. 189; *Sidesary Dosse, v. Dooroga Churn Doss*. 14th July 1865. 2 Ind. Jurist p. 22. 1 Ratt. Rep. p. 90.

15. There are no restrictions in the Hindu Law of adoption confining the selection to the family of the deceased husband.



## ADOPTION.

On the contrary, a stranger may be adopted. *Luleca, v. Koola*, 2nd Jan. 1866. 1 Punjab Record, p. 3.

16. The Hindu law does not allow of the adoption of a *Paluk Putra*. *Kaleechunder Chowdoory, v. Sheeb Chunder*. 12th April 1868. 2 W. R. p. 281.

17. According to Hindu law an orphan cannot be adopted. *Subbaluvammal, v. Ammakuti Ammal*. 9th July 1861. 2 Mad. H. C. Rep. p. 129. 1 Ratt. Rep. p. 170.

*(b) Relation.*

18. In Bombay the adoption of a sister's son of the *Vaishya* caste is valid. *Ganpatrav Vireshvar, v. Vilhoba Khandappa*. 9th July 1867. 4 Bom. H. C. Rep. a. c., p. 130.

19. But a *Brahmin* cannot make such an adoption. *Narasammal, v. Bularama Charlu*. 31st Oct. 1863. 1 Mad. H. C. Rep. p. 120.

20. A *Brahmin* widow cannot adopt her uncle's son as she could not be his mother unincestuously. *Degumbarce Dabea, v. Tarawony Dabea*. Macn. Cons. H. L. p. 170.

21. A brother cannot be adopted by a brother. *Ranjeet Singh, v. Obye Narain Singh*. 26th July 1817. 2 Sel. Rep. p. 315; *Muthswamy Naidu, v. Lutehmaderman*. 30th August 1852. Mad. S. D. p. 96.

22. Nor can one brother give another brother away in adoption. Mac. Cons. H. L. p. 207-8.

23. The same rule applies in the case of an uncle.—*Ibid.*

24. A sister's daughter cannot become an appointed daughter, or her son a *putrica putra*; nor is the adoption of a *putrica putra* valid in the present day. *Nursing Narain, v. Bhuttun Lall*. 29th April 1864. S. H. C. Rep. p. 194. 1 Ratt. Rep. p. 162.

*(c) Age.*

25. The adoption of a boy of above 5 years of age, though the selection be not laudable, is valid according to the Hindu law of Bengal, provided the initiatory ceremonies have been

performed in the family of the adopter, and not in that of his natural father. *Keerul Narain, v. Bhobonesree*, 6th Sept. 1806. 1 Sel. Rep. p. 213. Ratt. Rep. p. 171.

26. The age of five years does not limit the period of eligibility for adoption. *Doolabh De, v. Mann Beebee*, 27th July 1830. 5 Sel. Rep. p. 50.

27. The age at which a child may be adopted, is not the same in every caste. A child may be adopted from the twelfth day after his birth to the day of *Upanayana* or his investiture with the sacred thread worn across the body. The time for performing this ceremony is for *Brahmins* within their eighth year of age; for *Ksatriyas* within their eleventh; and for *Vaidyas* within their tenth. *Upanayana* does not attach to *Sudras*; and, therefore, the limit within which they may be adopted is the period of marriage or the sixteenth year of their age. *Ranee Seevagang Nachiar, v. Strcemathoo*, 1 Mad. S. D. p. 101.

28. The rule which requires *Upanayana* to be performed amongst *Brahmins* within the age of eight years, is merely directory, and the ceremony will not be vitiated though performed at a later period. *Strcenerassien, v. Sashyummol*, 16th July 1859. Mad. S. D. p. 118.

29. The adoption of a *Brahmin* is valid if made before the *Upanayana* has been performed, though the boy may have passed the age at which that ceremony ought according to strict rule, to be accomplished.—*Ibid*.

30. In Bengal, the adoption of a *Sudra* boy, otherwise eligible, is permissible at any age previous to his marriage. *Ranee Nitradaye, v. Bholanath Doss*, 23rd June 1853. S. D. Cal p. 553.

31. By the usages of the sect of *Surogees*, adoption at the age of nine years is valid, and on the death of an adopted son without issue, during the life-time of the adoptive mother, the father's right of adoption vested in the widow and not in the mother. *Chemnee Bacc, v. Gutto Bacc*, 21st Sept. 1863. N. W. P. Rep. p. 636.

## ALIENATION.

## III.—Form to be observed.

32. The non-performance of the *Putreshti-yag*, i. e.,—Oblation by fire, the *Churakaran*, or tonsure, and other ceremonies does not invalidate an adoption, the operative part of the ceremony of adoption, being the giving and receiving. *Dayamoye Chowdrain, v. Rashbehary Singh*. 29th Sept. 1852. S. D. Cal. p. 1001. 1 Ratt. Rep. p. 176.

33. But the giving and receiving must be actual and not simply constructive by execution of deeds. *Sreenarain Mitter, v. Kishen Soonderee Dossee*. 5th March 1869. 11 W. R. p. 196. 2 B. L. R. a. c., p. 279. 1 Ratt. Rep. p. 203. (2)

34. In Hindu authorities of adoption, the convention of kinsmen and representation to the Rajah are mentioned as part of the procedure, but not as essential to its validity; so also the assent of the wife of the adopter. But the *Yajna*, or sacrifices, are essential. *Alunk Mangaree, v. Fakcer Chaud Sircar*. 11th Sept 1834 5 Sel. Rep. p. 356.

35. The *Dwyámushyáyana* form of adoption is not recognised in the present age. *Annomala Auchy, v. Mungalam*. 1859. Mad. S. D. p. 81.

## ALIENATION.

## I.—By Father.

## II.—By Widow.

## III.—By Co-Sharers.

## IV.—Son's Right to set aside.

## V.—Nephew's Right to set aside.

## 1.—By Father.

1. Under the *Mitácshará* Law a father can dispose of acquired property at his pleasure. but the consent of sons, or the existence of a necessity, is required in case of any alienation of ancestral immovables. *Madun Gopal Thakoor, v. Ram*

*Buksh Pandeh*. 30th Sept. 1863. 6 W. R. p. 71. 2 Wym. Rep. p. 18. 1 Ratt. Rep. p. 232. *Suddanund Monaputtur, v. Bonomali Mohaputtur*. 26th Sept. 1866. *Ibid.* p. 256, and *Bawa Misser, v. Raja Bishen Prokush*. 10 W. R. p. 287. 1 Ratt. Rep. p. 238.

2. Thus in the case of *Huree Pant Bhao, v. Nana Narain Rao*. 2nd April 1855. N. W. P. Rep. p. 146, the Agra Sudder Court held, that the competency of a Hindu to make a testamentary disposition of his self-acquired property could no longer be regarded as open to discussion.

3 The same doctrine has since been repeatedly confirmed by the same Court. *Ganganath Panper, v. Joalanath*. 17th June 1859 N. W. P. Rep. p. 63 ; *Khem Chund, v. Gomaneer Koer*, *Ibid*, for 1861, p. 423. 1. Ratt. Rep. p. 238.

4. A recent decision of Agra High Court has engrafted the singular qualification to the power of a Hindu over his self-acquired property, in that while he may make an unequal distribution of that property, he has not such absolute power of disposal by gift in his life-time as to enable him to give it all to one son or grandson in exclusion of the rest. *Mohu Sookk, v. Budree*. 21st May 1869. 1 N. W. P. Rep. p. 57. 1 Ratt. Rep. p. 238.

5. According to the Mithila law, as under the *Mitácshará*, the consent of sons or grandsons is requisite in the case of any alienation of ancestral immoveable property, except on proof of necessity, in which event the father is himself empowered to effect a sale or other transfer. *Gopalchund Pande, v. Baboo Koonwar Singh*, 3rd April, 1830. 5 Sel. Rep. p. 24; *Mootee Lall, v. Mitterjeeb Singh*, 29th June 1856. 6 Sel. Rep. p. 71. *Sheo Pershad Jha, v. Gunga Ram Jha*. 23rd April 1866. 5 W. R. p. 221; *Kantoo Lall, v. Greedharce Lall*, 16th April, 1868. 9 W. R. p. 469. 1 Ratt. Rep. p. 239.

6. It has been held that a father cannot give a Mukurrercee lease of even a very small portion of ancestral land, at a nominal rent as a reward for long and faithful service, when

his children do not consent to such a grant. *Pratabnarain Dass, v. Court of Wards*, 12th April 1869. 3 B. L. R. a. c., p. 21. 1 Ratt. Rep. p. 239.

7. Where a settlement made by a father of ancestral property is not assented to by the sons living at the time, and another son is afterwards born, no subsequent assent of the former would be binding on the latter. *Hurodoot Narain Singh, v. Beer Nurain Singh*, 12th May 1869. 11 W. R. p. 480.

8. Where decrees of creditors were in execution against the father, and the latter was himself in confinement under a criminal prosecution, and had been fined, it was held that these circumstances justified alienations. *Luchmun Koor, v. Madari Lall*, 16th Sept. 1850. 1 Sel. Rep. N. W. P. p. 77. 1 Ratt. Rep. p. 239.

9. The head of a family may alienate hereditary property during the minority of sons or brothers, for their support, or for the services of religion or other pressing necessity, without the consent of sons or brothers whose power of interdiction to prevent alienations of the ancestral estate extends only to acts of dissipation or waste. *Mad. S. D. for Dec. 1859*, p. 142; *Ibid*, p. 270, *Ibid* for 1860, p. 49; *Ibid*, p. 227; *Bisambhur Naik, v. Sadasheeb Mohapattur*, 9th Sept. 1861. 1 W. R. p. 96; *White, v. Bistoehunder Bose*, 16th May, 1863. *Hay's Rep.* p. 567; and *Mohir Singh, v. Hazara Singh*, 11th April 1866. 1 Punjab Record, p. 53.

10. The payment of Government Revenue is legal necessity. *Muhespartab Singh, v. Ramghureeb Chowbee*, 18th Augt. 1851. 1 Sel. Rep. N. W. P. p. 173; 1 Ratt. Rep. p. 239.

## II.—By Widow.

11. A Hindu widow in Madras and Bombay, and also in Mithila, has an absolute right over all the moveable property left by her husband. *Pranjeevandas, v. Toolsydas*, 8th Nov. 1859. 1 Bom. Rep. p. 130. *Ratt Rep.* p. 253; *Doorga Dayee, v. Poorun Dayee*, 8th March 1866. 5 W. R. p. 141.

12. But according to the law of Benares as well as of Bengal, there is no distinction in respect of a widow's power of disposition between moveable and immoveable property ; and such power is limited to certain contingencies. *Bhugwandeen Doobey, v. Myna Bacc.* 14th March 1868. 9 W. R. p. c. p. 23 ; 1 Ratt. Rep. p. 263.

### III.—By Co-Sharers.

13. The *Benares* law does not allow one of the co-parcenary in a joint-family to alienate his share without the consent of the remaining co-sharers, or unless the co-parcenary have entered into a compact to permit alienation. *Joynarain Singh, v. Rosheen Singh.* 19th March 1860. N. W. P. Rep. p. 162 ; *Thakur Rai, v. Sakal Ballee Rai.* 31st July 1862, Ibid, p. 47.

14. The Bombay Court have followed the same doctrine. *Gungabai, v. Ramana.* 11th July 1866, 3 Bom. II. Rep. p. 66. a. c., and so also the late Sudder Court of Madras, in *Ramukutta Aiyar, v. Kulatturaiyan.* Mad. S. Dec. for 1859, p. 270 ; *Kana Kashaisy Pillai, v. Sesbachala Sastri,* Ibid, 1860, p. 17 ; and *Sundra Pillai, v. Tegaraja Pillai.* Ibid, p. 67. But a recent decision of Madras High Court, has held that a member of an undivided family may make a valid alienation of his share and interest, and such share may also be sold in execution of decree. *Virasvami Gramini, v. Syvasvami Gramini.* 15th Dec. 1863. 1 Mad. II. Rep. p. 471.

### IV.—Son's Right to set aside.

15. A son is entitled to sue in the life-time of his father for a cancelment of the sale by the father of ancestral immoveable property, but the purchaser is entitled to retain possession during the father's life-time. *Baboo Ram, v. Gujadhur Singh.* 25th March 1867. 1 Agra F. B. R. p. 86 ; 1 Ratt. Rep. p. 247.

16. He is entitled at the father's death to recover such property improperly sold ; and unless the purchase money went to credit of the joint estate, or was applied to removing any incumbrance binding on the son, the purchaser cannot claim

## ANCESTRAL PROPERTY.

a refund of the purchase money from the son. *Madhoo Dyal Singh, v. Golbar Singh*. 29th April 1868. 9 W. R. p. 511 ; 5 Wym. Rep. p. 317 ; 1 Ratt. Rep. p. 241.

17. According to the *Mitácsharú* law, a son acquires by birth a right in ancestral property and has a right during his father's life-time to compel a partition of such property. The father cannot, without the consent of the son, alienate such property except for sufficient cause ; and the son may not only prohibit the father from so doing, but may sue to set aside the alienation if made. The cause of action to the son accrues when possession is taken by the purchaser. A new cause of action does not accrue, upon the subsequent birth of a younger brother, either to the elder brother alone, or to him and his brother jointly. *Rajah Ram Tiwary, v. Luchmun Pershad*, 8 W. R. f. b. r. p. 15.

### V.—Nephew's Right to set aside.

18. The consent of nephews to the sale by the uncle of his divided share of ancestral property is not requisite. *Gopal Dutt Pandey, v. Gopal Lall Misser*. 17th Sept. 1859, S. D. Cal. p. 1314.

19. The principle of distinction is, that a son or grandson has an inchoate right in the ancestral immoveable property of his father from the time of his birth, whereas a nephew has no right at all in the ancestral property in the possession of his uncle until after the death of the latter.—*Ibid.*

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## ANCESTRAL PROPERTY.

1. Profits of an ancestral estate are patrimony, and properties acquired with them become the joint estate of father and sons, not of the father exclusively. *Sudanund Mohapattur, v. Bonomalee Mohapattur*. 26th Sept. 1866, 6 W. R. p. 256 ; 2 Wym. Rep. p. 308 ; 1 Ratt. Rep. p. 320.

An appeal from this decision is pending before the Privy Council.

2. 'Paternal' was held to mean property derived from the father in whatsoever manner the father had acquired it. *Rajmohun Gossain, v. Gourmohun Gossain*, 8 M. I. App. p. 91.

3. The Privy Council in the great case of *Katama Nachiar, v. Rajah Shivagunga*, 9 M. I. App. p. 609, has established the position that when property belonging in common to a united *Hindu* family has been divided, the divided shares go in the general course of descent of separate property; that there is no distinction between property thus acquired by partition of family property, and self-acquired property, either in point of descent or of alienability.

#### BEQUEST.

*See 'Endowment,' Nos. 7, 8.*

BROTHERS (FULL-BLOOD.)

*See 'Inheritance,' (VII.)*

BROTHERS (HALF-BLOOD.)

*See 'Inheritance,' (VII.)*

BROTHER'S SON.

*See 'Inheritance,' (VII.)*

#### CHIELA.

*See 'Inheritance,' (X.)*

#### CUSTOM.

*See 'Inheritance,' (XI.)*

DAUGHTERS—THEIR SONS.

*See 'Inheritance,' (V.)*

### DEBTOR AND CREDITOR.

1. A creditor of a deceased *Hindu* obtains no better position on the death of his debtor, as against the debtor's estate, than that which he enjoyed during the debtor's life-time. *Zubeerdust Khan, v. Indurman*. 6th March 1867. 1 Agra F. B. R. p. 72; 1 Ratt. Rep. p. 309.



2. Where the heirs have disposed of the estate to a *bonâ fide* purchaser, the creditor cannot follow it in the hands of the latter.—*Ibid.*

3. A Hindu possessing himself of the land of his father is bound to pay his debts. *Jamoonah Raur*, v. *Muden Dey*. 20th Jan. 1785. Hyde's Notes, Sm. R. p. 143; *Baranassy Ghose*, v. *Ramlonoo Dutt*. 20th Nov. 1788. Chamb. Notes, Sm. R. p. 144.

4. A son was declared not to be liable for certain debts or engagements of his father, among which was that of giving money, or agreeing to give money, in consideration of receiving a girl from her family to be married to his son, which came under the denomination of *Shulk*, and was forbidden by the law. *Keshow Rao*, v. *Naro Junardhun*. 16th March 1822. 2 Borr. p. 194.

5. The sons of a Hindu (taken in execution of a decree, and dying in gaol) were held to be liable for their father's debts in property, but not in person. *Manuckchund*, v. *Deekristu*. 24th June 1824. Sel. Rep. p. 9.

6. The sale of the rights and interests of a father in ancestral property in payment of family debt, extinguishes the contingent interests of his sons. *Balmokund*, v. *Jhoona Lall*. 20th Jan. 1857. 1 N. W. P. Rep. p. 11; 1 Ratt. Rep. p. 316.

7. But not so if the debt was contracted solely for the use of father.—*Ibid.*

8. Sons have vested interest in ancestral property, and their interest is saleable at any time in satisfaction of claims against them. *Goor Surn Dass*, v. *Ram Surn Bukut*, 30th Jan. 1866. 5 W. R. p. 54. But on a subsequent hearing of the same case, it was held that the rights of a son to succeed by survivorship to his father's specific share of property, cannot be sold in execution of decree, such right being too remote. 25th July 1867. 8 W. R. p. 253; 1 Ratt. Rep. p. 319.

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ENDOWMENTS.

1. Manager of endowed property not competent to grant a Putnee thereof. *Motee Dass, v. Modoo Soodun Chowdoory*. 2nd Aug. 1864. 1 W. R. p. 4.

2. A Hindu widow cannot endow an idol with her husband's property or a portion thereof, to the detriment of the reversioner. *Kartick Chunder Chuckerbutty, v. Gour Mohun Roy*. 29th Aug. 1864. 1 W. R. p. 48.

3. An ascetic, a mere life-tenant, cannot alter succession to an endowment belonging to ascetics, by an act of his own in connection with the status under which he originally acquired the trust. *Mohunt Rumun Dass, v. Mohunt Ashbul Dass*. 1 W. R. 21st Sept. 1864. p. 160.

4. The right of worship of an idol being the joint property of the members of the family of the endower, cannot be transferred to a third party, a stranger to the family, so as to inure beyond the life of the assignor. *Ukoor Dass, v. Chunder Sheikur Dass*. 3 W. R. 20th July 1865. p. 152.

5. Where a Hindu ancestor makes no endowment for the support of the family idols, and creates no trust whereby his descendants were bound to provide for them, no legal obligation rests on them to support the idols, and no suit for contribution can lie against any of them for the expenses of the idols. *Sham Lall Set, v. Huro Soonderree Goopta*. 5 W. R. 11th June 1866. p. 29.

6. The high priest of a religious endowment in Assam, who was only a nominee of the grantees, was held to have no right to grant leases in his own name and of his own authority. *Ram Dass, v. Moheshur Deb Missree*. 7 W. R. 3rd May 1867. p. 446.

7. A bequest for the maintenance of an idol was upheld. *Nubkishen Mitter, v. Hurish Chunder Mitter*. 11th Aug. 1819. Mac. Cons. H. L. p. 323; *Krishno Mohun Surmon, v. Gopee Mohun Tagore*. 1813. Ibid, p. 349; *Womes Chunder Paul Chowdoory, v. Prem Chunder Paul Chowdoory*. Ibid. p. 350.

8. A bequest of property for pious purposes was upheld. *Ramdolall Sircar, v. Sona Debea*. 22nd Nov. 1816. Mac. Cons. H. L. p. 331; *Ramtonoo Mullic, v. Ramgopal Mullic*. 11th July 1808, Ibid, p. 336. 1 Knapp, p. 245.

9. The management only of lands duly endowed for religious purposes, and not the lands themselves, passes by inheritance. *Elder Widow of Raja Chutter Sen, v. Younger Widow of the same*. 15th April, 1807. 1 Sel. Rep.

10. Under the Hindu law a house dedicated to "Muhabeer" is inalienable and for ever set apart for purposes of religion, but if a part only of a house be denoted to the reception of an image, the other portions continuing to be occupied, the proprietor may dispose of those other portions as he pleases. *Hurnarain, v. Golindram*. 23rd Sept. 1850. 1 Sel. Rep. N. W. P. p. 81.

11. A debt incurred by the head of a Hindu family residing together is under ordinary circumstances presumed to be a family debt. *Hunoomanpersad Panday, v. Babooee Munraj Koowaree*, 6 M. I. App. p. 393.

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## EVIDENCE.

1. By the Hindu law, twelve years are allowed for re-appearance of a missing person; after the lapse of that period he will be considered to be dead. *Ayabutte Dasse, v. Raj Kishen Shahoo*. 25th April 1820, 3 Sel. Rep. p. 38; *Ramlochan Pridhan, v. Hemchunder Chowdoorce*. 13th Augt. 1836. 6 Sel. Rep. p. 96; *Mankee Koer, v. Khedoo Lall*. 22nd June 1863. Hay's Rep. p. 623.

2. Onus of proving the application of the purchase money in the case of a son suing to set aside by a father where the purchaser claims a refund of the purchase money, lies on the purchaser. *Madhoo Dyal Singh, v. Golbar Singh*. 29th April 1868. 9 W. R. p. 511; 5 Wym. Rep. p. 317. 1 Ratt. Rep. p. 241.

3. Ordinarily, however, a purchaser or mortgagee is not bound to prove actual necessity, on the appropriation of the money raised by such sale or mortgage; it is sufficient if he can prove that he acted *bonâ fide* and with due caution, being reasonably satisfied at the time of the necessity of the sale or mortgage. *Rampersad Singh, v. Nagbunshee Kooer*. 27th April 1868. 9 W. R. p. 501.

4. Where one member of a joint family claims a property as separate, the *onus* is on him to prove his allegation. *Sheo Ruttun Koonwar, v. Gour Beharee Bhukul*, 3rd May 1867. 7 W. R. p. 449.

5. A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interests if his share be not separately secured. *Sramiyar Pillai, v. Chokkalingam Pillai*, 1 Mad. II. Rep. 9th Dec. 1862, p. 105.

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## GIFT.

### I.—Generally.

#### II.—By Widows.

### I.—Generally.

1. According to the law of Benares, the gift of property to a brother's son is valid, notwithstanding the existence of a daughter, provided the property be undivided. *Sheodasnarain, v. Kunwal Bas Koonwar*. 5th July 1823. 3 Sel. Rep. p. 313.

2. A verbal gift by a Hindu, eighteen and a half years of age, made the day before his death, he being at the time in full possession of his senses, is valid. *Gosainchund Kubray, v. Kishenmunee*. 8th July 1836. 6 Sel. Rep. p. 77.

3. A gift of property by a Hindu is not invalid by reason of its being subject to a condition. *Madhubchunder Banerjee, v. Bamasoondery Dabea*. 25th January 1853. S. D. Cal. p. 102.

4. A certain assignment of property made with a view to undisputed succession to the raj of the elder branch of the family and sufficient provision for the younger branches, held to be a free absolute and personal gift to the parties specified in the deed. *Rameshur Buksh Singh, v. Maharaja Maheswar Buksh Singh*. 7th March 1855, S. D. Cal. p. 71.

5. There is no prohibition in the Hindu law against a gift to an idiot. Although an idiot child cannot take by right of inheritance, a gift by a parent to an idiot child, to operate after parent's death, is valid. *Kooldeb Narain, v. Wooma Koomaree*. 1 Marshall H. Rep. p. 357.

## II.—By Widows.

6. A widow cannot, by the law of Mithila, Bengal, or Benares, made a gift of her deceased husband's immoveable property without the consent of his heirs, except for certain special reasons specified in the *Shasters*. *Sreenarain Rai, v. Bhya Jha*. 27th July 1812. 2 Sel. Rep. p. 29; *Mohun Lall Khan, v. Ranee Siromunee*. 31st Augt. 1812. 2 Sel. Rep. p. 40.

7. Semble. A widow may give away in her life-time personal property derived from her husband, but she cannot will it away. *Jushada Raur, v. Juggernath Tagore*. 12th Feb. 1816. East's Notes, Case 47.

8. A Hindu widow has the power of alienating, by gift, from one to three-sixteenths of her late husband's property, for the benefit of his soul. *Ram Chunder Serma, v. Gungagobind Banerjee*. 1st Feb. 1826. 4 Sel. Rep. p. 147.

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## GUARDIAN.

1. The Hindu law does not prohibit a father from appointing by writing or by word any other person than the mother to be the guardian of his minor children. *Soobah Pirthee Lall Jha, v. Soobah Doorga Lall Jha*. 24th Jan. 1867. 7 W. R. p. 73.

2. An elder brother is competent to assume guardianship when the mother has become a religious recluse. *Issur-chunder Surma, v. Brojonath Surma*. 9th Sept. 1850. S. D. Cal. p. 471.

3. Under the Hindu law, an elder brother, even though only a half-brother, is the natural guardian (whose mother is disqualified by loss of caste,) in preference to a grandmother. *Mahtaboo, v. Gunes Lall*. 3rd July 1851. S. D. Cal. p. 329.

4. According to Hindu law, a paternal grandmother has a preferential right over a step-mother to the guardianship of a minor. *Moharanee Ram Bunsee Koonwar, v. Moharanee Soobh Koonwar*. 1st April 1867. 7 W. R. p. 321.

5. The step-mother of a Hindu minor, and not his paternal uncle, is his guardian; and she can exercise her powers as such, even though the parents of the said minor should have made him over to the paternal uncle. Sel. Rep. N. W. P. p. 116.

6. A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interest if his share be not separately secured. 1 Mad. II. C. Rep. p. 105.

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## INHERITANCE.

*I.—Generally.*

*II.—Of Sons and Grandsons.*

*III.—Adopted Sons.*

*IV.—Widows.*

*(a) Generally.*

*(b) Of Widows of Sons, &c.*

*V.—Of Daughters, their Sons, &c.*

*VI.—Of Parents.*

## INHERITANCE.

VII.—*Of Brothers, their Sons, &c.*

VIII.—*Of Sisters, their Sons, &c.*

IX.—*Of other Heirs.*

X.—*Of Pupil, &c.*

XI.—*By Customs.*

XII.—*To Woman's Property.*

XIII.—*The Offices.*

XIV.—*Exclusion from Inheritance.*

XV.—*To Property of Absentee.*

I.—*Generally.*

1. The mere act of performing the funeral rights of a deceased Hindu, does not give a title to succession, without proof of right. *Dutt Narain Singh, v. Ajcet Singh*. 14th Feb. 1799. 1 Sel. Rep. p. 21.

2. Under the Hindu law, the right to succession vests immediately on the death of the owner of the property, and cannot, under any circumstances, remain in abeyance in expectation of the birth of a preferable heir not conceived at the time of the owner's death. *Kashab Chunder Ghose, v. Bishnoopersad Bose*. 12th Dec. 1860. 2 S. D. Cal. p. 340; *Koylash Nath Dass, v. Gyamonee Dossee*. 30th June 1864. S. H. Rep. p. 314.

3. According to Hindu law, the right of inheritance is not suspended (except in certain cases) by pregnancy or until adoption. *Dukhina Dassee, v. Rashbehary Mazoomdar*. 11th Sept. 1866. 6. W. R. p. 221.

4. Jains are governed by the Hindu law of inheritance applicable in that part of the country in which the property is situate. *Lalla Muhabeer Pershad, v. Kundun Koonwar*. 29th June 1867. 8 W. R. p. 116.

5. Byragees are not excluded from inheritance. *Tilukchunder, v. Shamachurn Prokash*, 24th Nov. 1864. 1 W. R. p. 209.

6. By the Hindu law in force in Mithila or Tirhoot, the right of succession vests in the descendants in the paternal in preference to those of the maternal line. *Rajender Narain Rai, v. Rutcheputty Dutt Jha.* 2 M. I. App. p. 132.

7. "*Samanodakas*" (or persons allied by a common oblation of water) belonging to the "gotra" (or race or general family) of a deceased person are, according to the Hindu law, sufficiently cognate to succeed to property in default of parties nearer of kin. *Nursingnarain, v. Bhuttun Lall.* 29th April 1864. S. H. Rep. p. 194.

II.—Of Sons and Grandsons.

8. Sons share equally in the landed estate of their deceased father : the eldest has no claim to a greater portion than the rest on the ground of primogeniture. *Gudadhur Surma, v. Ajoodhiaram Chowdoory.* 30th Oct. 1794. 1 Sel. Rep. p. 6 ; *Bhojrubchund Rai, v. Rusoomonee.* 18th Sept. 1799. 1 Ibid, p. 27 ; *Sheo Buksh Singh, v. The heirs of Futteh Singh.* 18th Augt. 1818. 2 Ibid, p. 265. *Tulwar Singh, v. Pukhan Singh.* 2nd Feb. 1824. 3 Ibid, p. 301 ; *Isshur Chunder Carformah, v. Gobind Chund Carformah.* Jan. 1823. Macn. Cons. H. L. p. 74.

9. Sons by different mothers inherit equally. Distribution is made among them *per capita* and not *per stirpes*, not according to the mothers, but with reference to the number of sons. *Sumrun Singh, v. Khedun Singh.* 27th June 1814. 2 Sel. Rep. p. 116 ; *Muncha, v. Brij Bhookun.* Sel. Rep. Bom. p. 1.

10. Grandsons inherit *per stirpes* and not *per capita*. *Joy-narain Mullick, v. Bissumbhur Mullick.* Augt. 1829. Macn. Cons. H. L. p. 48.

11. The son of a *Sudra*, by a slave girl, is not entitled to share with legitimate sons in the inheritance of an uncle by the father's side. *Nissar Murtojah, v. Kowar Dhunwant Roy.* 15th July 1863. 1 Marshall's Rep. p. 609.

12. An illegitimate son of a *Khatra*, one of the three



regenerate castes by a *Sudra* woman cannot by Hindu law of inheritance, succeed to the inheritance of his putative father; but he is entitled to maintenance out of his deceased father's estate. *Chuoturiya Ran Murdun Syn, v. Sahub Purlud Syn*. 7 M. I. App. p. 18; 2 N. W. P. Rep. p. 235.

13. In the case of a *Sudra* class, illegitimate children being qualified to inherit.—*Ibid*.

14. In the case of *Shiboo Singh* decided on the 17th July 1855, 10 N. W. P. Rep. p. 415, which rules that in default of grandsons of the last male owner, the inheritance can descend no further is erroneous, and the ruling, in accordance with the earlier precedents, that in default of nearer of kin, *Sapindas*, or parties related in the seventh degree (the enumeration commencing from whence the direction of the line diverges), are entitled to inherit. Held, also, that in default of *Sapindas* the *Samanódakas*, or paternal kindred, extending to the fourteenth degree has latterly disregarded by subsequent precedents. *Angur Singh, v. Ram Singh*. 18th July 1865. N. W. P. Rep. p. 4; W. R. p. c. p. 1.

15. Held on appeal that, by Hindu Law, an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person, if having begotten, and being in the womb at the time of the ancestor's death, he is afterwards born capable of inheriting. 10th March 1869. *Kalidass, v. Krishen Chunder Dass*. 10th March 1869. 2 Bengal L. R., f. b., p. 103.

15a. A grandson, his father being dead, shares equally with a son the self-acquired property of the grandfather. 1 W. R. p. 317.

### III.—Adopted Sons.

16. An adopted son (*Dattaka*) taking the estate of his adoptive father, is excluded from inheritance in his own family. *Sreenath Surma, v. Radhakant*. 24th Nov. 1796. 1 Sel' Rep. p. 15; *Duttanarain Singh, v. Ajeet Singh*, 14th Feb. 1799'

1 Ibid, p. 20; *Ranee Bhowani Dabea, v. Ranee Soorajmuncce.* 12th May 1806. 1 Ibid, p. 135. And the same point was decided in *Gopee Mohun Deb, v. Rajah Rakishen.* 1800. Cited in East's Notes, Case 75. Macn. Cons. II. L. p. 230.

17. An adopted son succeeds collaterally as well as lineally in the family of his adoptive father. *Sham Chunder, v. Narainee Dabea.* 21st Aug. 1807. 1 Sel. Rep. p. 203; *Gour Kishore Kuberaj, v. Ruttensuree Dosse.* 6 Ibid, p. 203. *Sunboochunder Chowdooree, v. Narainee Dabea.* 6th Feb. 1835. 3 Knap. Rep. p. 55; *Taramohun Bhattacharjee, v. Kripamoye Dabea* 31st March 1858. 9 W. R. p. 423; *Gokulchund, v. Narain Dass.* 21st Jan. 1862. 1 N. W. P. Rep p. 47. An adopted son cannot succeed to his adoptive maternal grandfather's estate, where there are collateral male heirs. *Marunmoyee Dabea, v. Bejoykisto Gossamee.* 23rd July 1863. S. F. Ruling, p. 121.

18. One adopted by the *Kritrima* form, which is used in Behar, Trihoot, &c., takes inheritance both in his own family and that of his adoptive father. 1 Sel. Rep. p. 15 note.

19. If one who has been adopted die without issue, the property of the adopter goes to his natural heirs. *Mad. S. D.* 1859. p. 35.

20. An adoption in the *Kritrima* form does not give collateral heirship, the relation of *kritrima* for the purposes of inheritance extending only to the contracting parties. *Shibo Koeree, v. Jugun Singh.* 8th July 1867. 8 W. R. p. 155.

21. Immediately on the adoption of a son, by a widow, under authority of her husband, the estate to which she succeeded becomes the property of the adopted son. *Soo'ukna, v. Ramdoolall Pandeh.* 27th May 1811. 1 Sel Rep p. 434.

22. But where no authority was given, the adopted son has no claim to property of adoptive mother, until her death. *Luchmun Sahoo, v. Jubona Bye.* 15th March 1863. Hays's Rep. p. 410.

23. An adopted son has all the rights and privileges of

## INHERITANCE.

a son born, and succeeds to the *Stridhun*. *Tincoree Chatterjee*, v. *Denonath Banerjee*. 25th May 1865. 3 W. R. p. 49.

24. An adopted son of one wife, would succeed to the *Stridhuns* of a co-wife. *Moharaja Juggurnath Sahae*, v. *Mukhun Koonwar*. 15th May 1865. 3 W. R. p. 24.

25. But property which has descended to the adoptive mother from her father, reverts on her death, to her father's heirs. *Gunga Mya*, v. *Kishen Kishore Chowdri*. 17th Dec. 1821. 3 Sel. Rep. p. 170.

26. Where the natural son is born after adoption, the adopted son takes one-fourth, and the natural three-fourths of the estate left by the father. *Preag Singh*, v. *Ajoodia Singh*. 7th Dec. 1825. 4 Sel. Rep. p. 96.

## IV.—Widows.

## (a) Generally.

27. A widow succeeding to the landed estate of her husband takes only a life-interest. *Mahodu*, v. *Kuleani*. 14th March 1803. 1 Sel. Rep. p. 82. *Radhamunee Dabea*, v. *Sham Chunder*. 27th Sept. 1804. Ibid, p. 113; *Bijya Dabea*, v. *Unopoorna Dabea*. 26th Sept. 1806. Ibid, p. 215; *Nund Coomar Rai*, v. *Rajendernarain*. 2nd Dec. 1808. Ibid, p. 349; *Bhowani Dabea*, v. *Solukna*. 16th April 1811. Ibid, p. 431; *Ilem Chunder Mozoomder*, v. *Taramunee*. 18th Dec. 1811. Ibid, p. 481; *Kalipersad Rai*, v. *Degumber Rai*. 28th May 1817. 2 Ibid, p. 305; *Pookhnarain*, v. *Scesphool*. 5th Nov. 1821. 3 Ibid, p. 152; *Lalchee Koonwar*, v. *Sheopersad Singh*. 5th April 1841. 7 Ibid, p. 22; *Jaraon Koonwar*, v. *Doost Down Singh*. 19th April 1841. 7 Ibid, p. 26; *Kamavadhani Venkata Subbuiya*, v. *Joyso Narasingappa*. 25th June 1866. 3 Mad. H. C. Rep. p. 116.

28. If a Hindu die without issue, leaving two widows, they take his whole estate for life; and on the death of one, the whole devolves on the other, upon whose death it goes to

the collateral heirs of the husband. *Brojessary Dassee*, v. *Ram Kant Dutt*. 26th July 1816. Eastc's Notes, Case 54.

29. According to the *Mitácshará* law, a widow cannot succeed where the property is joint and undivided. *Duljeet Singh*, v. *Sheomanook Singh*. 7th Sept. 1802. 1 Sel. Rep. p. 79; *Raja Shumshere Mull*, v. *Ranee Dilraj Koonwar*. 31st Jan. 1816. 2 Sel. Rep. p. 216; *Runjeet Singh*, v. *Obhoy Narain Singh*, 26th July 1816. 2 Ibid, p. 315; *Munoruthee Koonwar*, v. *Raj Bunsee Koonwar*. 1st Sept. 1842. 7 Ibid, p. 113; *Gobind Doss*, v. *Moha Lukshmee*. 25th Augt. 1819. 1 Borr. p. 241; *Rungama*, v. *Atchma*. 11th Augt. 1827. 1 Mad. S. D. p. 521; *Pokh Narain*, v. *Seespchool*. 5th Nov. 3 Sel. Rep. p. 152.

30. Property accruing to an individual by his own labour devolves under the Hindu law, where there is no son nor adopted son, upon the widow. *Harnam Singh*, v. *Ujnassee*. 20th May 1850. 1 Sel. Rep. N. W. P. p. 28.

31. By the law of inheritance prevailing in Madras, and throughout the Southern parts of India, separate, and self-acquired estate descends to a widow in default of male issue of the deceased husband. *Katama Nachiar*, v. *Raja Shivagunga*. 27th April 1863. 9 M. I. App. p. 539.

32. According to the *Mitácshará* law, widow of the deceased takes the precedence of the brother in a divided Hindu family. 1862. Haye's Rep. p. 119.

33. A Hindu died, leaving a widow and minor son and daughter. The widow remarried after her husband's estate had vested in her son, the son subsequently died, and his step-brother took possession of the property. The widow then brought a suit against the step-brother for possession. Held, that the suit was maintainable, and that she could properly succeed as heir to her son, notwithstanding her second marriage. *Akora Suth*, v. *Boreani*. 2. B. L. R. a. c. 8th Sept. 1868. p. 199.

34. A widow succeeding as heir to her own son does not

lose the right to exercise the power of adoption. By making an adoption, she diverts her own estate only. *Bykantmonee Roy, v. Kristo Soonderee Roy*. 7 W. R. 15th April 1867. p. 392.

35. A childless widow and nearest heir of deceased husband has, under the *Mitácshará* law, an absolute right over all the moveable property left by him. *Doorga Dayee, v. Pooreen Dayee*. 8th March 1866. 5 W. R. p. 141.

(b) *Of Widows of Sons, &c.*

36. The Hindu law allows twelve years for the reappearance of a missing person in his father's life-time. If three or four years after his disappearance, his father should die, his wife is not immediately entitled to share in the property of his father, the wife of the son not inheriting to the property of the father-in-law; but after a lapse of twelve years, if no tidings be heard of her husband, and if there be no son, grandson, or great-grandson, she may claim her husband's share of his father's property. *Ayabuttee, v. Rajkishen Shahoo*. 25th April 1820. 3 Sel Rep. p. 28.

37. Ancestral property of an undivided family having descended to an adopted son, will go, on his death, to his widow; and the widow, of his adoptive father has no claim to share in the estate. *Venkata Subumul, v. Vencummul*. Case 12 of 1818. 1 Mad. S. D. p. 210.

V.—*Of Daughters, their Sons, &c.*

38. As between two married daughters the circumstance of having a son is no qualification, on this side of India, giving the married daughter having a son a prior claim to inheritance of her parent's property over the married daughter not having a son. such priority of claim depending on the several daughters being respectively endowed (*sadhan*.) or unendowed (*nirdhan*.) the unendowed daughter having the preference. *Bakubai, v. Manchhabai*, 8th July 1863. 2 Bom. H. Rep. p. 5.

39. Maternal grandsons by different mothers take *per capita* and not *per stirpes*. *Ramdhun Sen, v. Kishen Kanth Sen*. 17th July 1821. 3 Sel. Rep. p. 133.

40. Amongst Oudeech *Brahmins*, the daughter's sons cannot inherit their grandfather's estate during the life-time of his son's widow. *Muhulukmee, v. Grandson of Kripashookul*. 2 Borr. p. 557.

41. Held, that under the Hindu law a daughter cannot claim her father's inheritance during her mother's life-time. *Ramjua, v. Gess*. 23rd Dec. 1865. N. W. P. Rep. p. 207.

42. A daughter's son during the life-time of his mother is not competent to challenge the act of his maternal grandmother, for the mother is the preferential heir. *Radha Kishen, v. Bukhtawur Lall*. 18th June 1866. 1 II. C. Rep. N. W. P. p. 1.

43. Among the Jumboo *Brahmins*, a daughter of a man leaving no male issue succeeds to the property of her father, whether divided or undivided, and her daughter succeeds to her. *Dessaees Hureeshunker, v. Baees Mankoorur*. 6th Sept. 1838. Sel. Rep. Bom. p. 122 ; Morly, p. 320.

44. According to the *Mitáeshurá* law, a maiden daughter does not succeed to her father in preference to her paternal uncle. *Toolsee, v. Mohadeb Roat*. 6 W. R. 7th Sept. 1866. p. 197.

45. The author of the *Viváda Chintamuni*, a Mithila work, has omitted the daughter's son from the series of heirs ; but according to other authorities, including Mithila legal writers, the right of a daughter's son, next to a daughter, is declared. In a claim by a daughter's son, the Court held that such daughter's son is heir, disregarding his omission in the said work ; and thus ruling that the position in the *Dáya Croma Sangraha*, that a daughter's son, according to the Mithila writers, is not an heir, is erroneous. *Surja Kumari, v. Gandharap Singh*. 23rd Feb. 1837. 6 Sel. Rep. p. 142.

46. Under the Hindu law where property is proved to be a separate and divided property, the daughters and daughters'

sons are the legal heirs entitled to it and not more remote relations to the deceased. *Buryar Singh, v. Hunsee*. 20th Feb. 1867. 2 H. C. Rep. N. W. P. p. 166.

47. Held that according to Hindu law current at Benares, the daughter's sons inherit in default of qualified daughter, and that if there be sons more than one daughter they take *per capita* and not *per stirpes*. The widow was incompetent to modify the terms of the original transaction injuriously to the reversioners. *Ram Swaruth Pandey, v. Basdeo Singh*. 21st Feb. 1867. 2 H. C. Rep. N. W. P. p. 168.

#### VI.—Of Parents.

48. Held that the father of a donee under a *Krishnarpan* inherits the property, to the exclusion of the family of the donor. *Kaseeram, v. Ichha*. 24th July 1823. 2 Borr. p. 502.

49. The mother succeeds to her son, leaving no widow, nor issue, male or female. *Gadadhur Serma, v. Ajoodhiaram Chowdoory*. 30th Oct. 1794. 1 Sel. Rep. p. 7.

50. The right which a Hindu mother has in property inherited from her son is the same as that which a widow has in property inherited from her husband : the estate goes, on her death, not to her own heirs, but to the nearest heir of her deceased son. *Bijya Dibe, v. Unapoornah Dibe*. 26th Sept. 1806. 1 Sel. Rep. p. 215; *Nufer Mitter, v. Ram Coomar Chatterjee*. 26th May 1823. 4 Sel. Rep. p. 215.

51. A step-mother cannot take by inheritance from her stepson. *Lalla Johce Lall, v. Deo Banee Koonwar*. Sevestre H. C. Rep. p. 439.

#### VII.—Of Brothers, their Sons, &c.

52. A brother succeeds to his brother, leaving neither widow, father, mother, nor issue. *Gudadhur Serma, v. Ajoodhiaram Chowdoory*. 30th Oct. 1794. 1 Sel. Rep. p. 7.

53. According to Hindu Law a step-brother cannot inherit in preference to an uterine brother. *Ishen Chunder Chowdoory, v. Bhyrub Chunder Chowdoory*. 5 W. R. 9th Jan. 1866.

p. 21 ; *Beer Chunder Joobraj, v. Nilkishen Thakoor*. 26th Sept. 1864. 1 W. R. p. 177.

54. By the law as current in Mithila, a childless widow will not succeed to her husband's share of a joint undivided estate if he have any brothers him surviving ; they, and not the widow, succeeding to his share. *Runjeet Singh, v. Obhaye Narain Singh*. 26th July 1817. 2 Sel. Rep. p. 245 ; *Joraon Koonwur, v. Doosht Dowun Singh*. 19th April 1841, 7 Sel. Rep. p. 26 ; *Gobind Dass, v. Maha Lukshmee*. 25th Augt. 1819. 1 Borr. p. 241. The same point was decided in. *Rungama, v. Atchamma*. 1 Mad. S. D. p. 521 ; *Golab, v. Phool*. 9th Sept. 1816. 1 Borr. p. 154 ; *Phokhnarain, v. Seesphool*. 5th Nov. 1821. 3 Sel. Rep. p. 152.

55. According to Hindu Law, a brother's son's daughters are not heirs. *Rudha Pearce Dassee, v. Doorgamoonee Dassee*. 5 W. R. 6th March 1866. p. 131.

56. According to the law as current in Behar, the grandson of a paternal uncle is excluded by a brother's son, and on the brother's son's death, by his widow, if the family were divided. *Deepoo, v. Gowreesunker*. 23rd Feb. 1824. 3 Sel. Rep. p. 410.

57. According to the *Mitácshará* Law, a step-brother inherits after the widows if he survives them ; otherwise a uterine brother's son succeeds. *Burhum Deo Roy, v. Punchoo Roy*. 2 W. R. 26th Jan. 1865. p. 123.

58. The half brothers of a Hindu deceased were held to be entitled to his share of undivided property, excluding from the inheritance his widow and daughters. *Mankoonwar, v. Bhugoo*. 5th March 1822. 2 Borr. p. 139.

59. Under the *Mitácshará*, in default of all heirs, a brother's grandson can succeed as a *Sapindas*. *Kurecm Chund, v. Oodung Gurain*. 6 W. R. 15th Aug. 1866. p. 158.

60. A brother's daughter is not enumerated in the order of heirs as given in the *Mitácshará*. According to Macnaghten's Hindu law, page 76, 3 Select Reports, page 50, and 2 Strange's Elements of Hindu Law, page 239, brother's



daughter's son cannot inherit. It follows, therefore, that a brother's daughter cannot do so. *Jugmurut Kour, v. Seetulpersad Singh*. 24th Sept. 1863. 2 Sevestres H. R. p. 433.

61. Held in a recent decision of the High Court of Bengal (Full Bench Ruling) that an uncle or brother's daughter's son is entitled to be recognized as an heir according to the Hindu law current in Bengal. *Guru Gobind, v. Anund Lall*. 4th Feb. 1870. 5 B. L. Rep. p. 15.

62. Brother succeeds before the mother of a man deceased without separation. *Mem Bae, v. Kishnee Bae*, 2 Borr. p. 141.

#### VIII.—Of Sisters, their Sons, &c.

63. A sister cannot inherit (except in Bombay) as heir to her brother. *Ramdial Deb, v. Magnee*. 28th Nov. 1864. 1 W. R. p. 227; *Guman Kumari, v. Srikant Neogee*. 2 Sevestre H. C. Rep. p. 460.

64. According to the law of inheritance prevailing in Bombay, sisters succeed to the estate of their deceased brother. *Venayeck Anundrow, v. Luxm Bae*. 9 M. I. App. p. 516; *Ichuram, v. Purmanund Bhaxe*. 2 Borr. p. 515; *Laroo, v. Sheo*. 1 Borr. p. 80.

65. A sister's son does not inherit according to the *Mitácshará*. *Guman Kumari, v. Srikant Neogee*. Sevestre H. C. Rep. p. 460; *Thakoorain Sahiba, v. Mohe Lall*. 11 M. I. App. p. 386; *Kullamul, v. Kuppa Pillai*. 1 Stokes, p. 85.

66. Held in a recent decision of the High Court of Bengal (Full Bench Ruling) that in the absence of nearer relatives, a man may be heir to his mother's brother as regards property subject to the *Mitácshará*. *Amrit Kumari Dabee, v. Lakhynarain Chukerbutty*. 2 B. L. Rep. f. b., p. 28; see also No. 72.

#### IX.—Of other Heirs.

67. According to the law as current in Mithila, claimants to inheritance as far as the seventh, and even the fourteenth in descent in the male line from a common ancestor, are pre-

ferable to the cousin by the mother's side of the deceased proprietor. *Gungadutt Jha, v. Sreenarain Rai*. 24th April 1812. 2 Sel. Rep. p. 13; *Rutcheputty Dutt Jha*. 2 M. I. App. p. 132.

68. In the case of Shiboo Singh, decided on the 17th July 1855, 10 N. W. P. Rep. p. 415, which rules that in default of grandsons of the last male owner, the inheritance can descend no further is erroneous, and the ruling, in accordance with the earlier precedents, that in default of nearer of kin, *Sapindas*, or parties related in the seventh degree (the enumeration commencing from whence the direction of the line diverges) are entitled to inherit. Held also, that in descents to *Samanodocas*, or paternal kindred, extending to the fourteenth degree has been latterly disregarded by subsequent precedents. *Aughur Singh, v. Ram Singh*. 18th July 1865. N. W. P. Rep. p. 4; 11 W. R. p. c., p. 8; 5 B. L. Rep. p. c., p. 293.

69. The great-grandson of the great-great-grandfather of the deceased is, according to the *Mitácshará*, a nearer heir to the deceased than his father's sister's son. 12th July 1870. *Thakur Jibnath Singh, v. Court of Wards*. 5 B. L. Rep. p. 442.

70. Under the *Mitácshará*, if there be no kindred belonging to the same general family, and connected by funeral oblations, the successions devolve on kindred connected by libations of water. Gentiles must be exhausted before the cognates can succeed. *Dig Dage, v. Bhuttun Lall*. 11 W. R. p. 500; *Nursing Narain, v. Bhuttun Lall*. 29th April 1864. S. II. R. p. 194.

71. Held that a cousin in the third degree has no right of inheritance in the presence of cousin in the second degree. *Mahabeer Parshad, v. Ram Surun*. 4 H. C. Rep. N. W. P. p. 6.

72. The enumeration of *Bundhus*, or cognate kindred given in *Mitácshará* Chap. II. Sec. VI. para 1, is not exhaustive. The maternal uncle or father's maternal uncle will take as

heirs in preference to the Crown. *Gireedhari Lall Roy, v. The Govt. of Bengal.* 1 B. L. R. p. c., p. 44.

X.—*Of Pupil, &c.*

73. The right of inheritance to the estate of a deceased *guroo*, much less of a division of property left by him, whether hereditary or self-acquired, amongst his *chelas*, does not exist, but the right of succession depends upon the nomination made by the deceased *guroo*, confirmed by the *mohunts* of the sect on the occasion of their assembling for the performance of their duty. *Sheoram Brommochari, v. Subshook Brommochari.* 24th May 1824. 3 Sel. Rep. p. 477.

74. Where A claimed from B a moiety of property of a late *Mohunt*, judgment was given in B's favour, on proof that he had been appointed by the late *Mohunt*, as his principal pupil, and had been installed as his successor at the celebration of his obsequies. *Dhun Singh Gir, v. Mya Gir.* 15th Aug. 1806. 1 Sel. Rep. p. 202.

75. A pupil whom the late *Mohunt* had nominated his successor both to his office and lands attached to it in the presence of his pupils and the order, and who had been duly installed in office by the principal persons of the order, the pupils, and the neighbouring *Mohunts* was declared to be the heir of the deceased *Mohunt* in preference to another who alleging himself to have been appointed as his successor by the late *Mohunt* had produced a *Sunnud* from the Zemindar, and a *Perwannah* from the Collector in acknowledgment of his title. *Ram Rutton Dass, v. Sunmali Dass.* 15th Dec. 1806. 1 Sel. Rep. p. 226; *Mohunt Ramanooj Dass, v. Mohunt Debraj Dass.* 17th June 1839. 6 Sel. Rep. p. 262.

76. On a claim by a *Sunnassi* to the succession to a deceased *Mohunt*, it appearing that the claimant was principal pupil of the deceased, (but was not nominated as his successor,) and was installed as his successor at the obsequies by an assembly of *Mohunts*, judgment given in his favour. *Gunas Gir, v. Amrao Gir.* 9th Nov. 1807. 1 Sel. Rep. p. 201.

77. The successor to a *Gooroo* or spiritual teacher in his rights and possession, must, by the law of the religious order of the *Sunnasis*, or *Gossains*, be a *Chela*, or pupil of the deceased.—*Ibid.*

78. A Byragee is not necessarily such a religious devotee that his goods are inherited by his pupil in the event of intestacy. *Govind Dass, v. Rumsahoy*, 3rd Augt. 1845. 1 Fulton, p. 217.

79. Semble. The goods of a *Yati* are inherited by his *shishya* and not by his *Chela*.—*Ibid.*

XI.—*By Customs.*

80. Where, by the established usage of any particular country or province, the right of succession may be preserved to illegitimate children, as well as to those born in wedlock or adopted, such usage is to be adhered to. *Mohun Singh, v. Chumun Rai*. 20th Nov. 1799. 1 Sel. Rep. p. 37.

81. In the case of *Sudras* the law has been and still is that bastards succeed their fathers by right of inheritance. *Pandaiya Telaver, v. Puli Telaver*. 3rd Augt. 1863. 1 Mad. H. Rep. p. 478.

82. Where, by the usage of the country and family of parties claiming certain prerogatives and property, it was customary that such should vest in the senior male of a particular branch of the family, it was held that a testamentary disposition in favor of any other member of the family, was void and of no effect. *Malosherry, v. Mootherakal*. Case 5 of 1825. 1 Mad. S. D. p. 509.

83. Semble. Among the *Jumboo Brahmins*, if a man die leaving a daughter and no male issue, the daughter and her daughter would inherit his property, even when undivided, and not his cousins, or collateral relatives, who could only succeed on failure of all other heirs; as it is the custom of the caste for women to succeed, whether the family be divided or undivided. *Dessaes Hurreeshunker, v. Baees Mankooar*, 6th Sept. 1838. Sel. Rep. p. 122.

84. In cases of inheritance, according to the Hindu law, in order to legalise a deviation from the strict letter of the law, it is necessary that the usage authorising such deviation should have been prevalent during long succession of ancestors in the family, when it becomes known by the name of *Kulachar*, and has the prescriptive force of law. *Sumrun Singh, v. Khedun Singh*. 27th June 1814. 2 Sel. Rep. p. 147.

85. Hindu families are ordinarily governed by the law of their origin, not by that of the domicil until the adoption of the law of a new domicil is proved. *Raj Chunder Narain Chowdoory, v. Gocul Chand Goh*. 22d June 1801, 1 Sel. Rep. p. 56; *Rucheeputty Dutt Jha, v. Rajender Narain Rai*. 12th Feb. 1839. 2 M. I. App. p. 132; *Junaruddun Missar, v. Nobin Chunder Perdhan*. 30th Dec. 1862. Hay's Rep. p. 534; *Inkea Dubea, v. Gunga Gobind Dobch*. 9th Feb. 1864, S. II. R. p. 56; *Ram Brama Pandeh, v. Kameenec Soonderee Dassee*. 10th Dec. 1866. 6 W. R. p. 295; *Surendernath Roy, v. Heramunee Birmani*, 2d July 1868. 1 B. L. R. p. c., p. 26.

86. Where a family of Bengali *Sudru Sudgop* had migrated to Mithila at a remote period, and it was proved by the evidence that they had adopted the laws and customs of Mithila, the Mithila law of inheritance was held to be applicable. *Ranee Pudnavate, v. Doblar Singh*. 29th June 1817. 4 M. I. App. p. 259.

87. Agreeably to the family usage, the succession by primogeniture to an estate in *Chota Nagpore*, was upheld against a claim for division of the ancestral estate. *Chutterdharee Singh, v. Telukdharee Singh*. 22nd May 1839. 6 Sel. Rep. p. 260.

88. By the usage of the *Zemindar Pachate*, the eldest son was held to be entitled to succeed to the *Raj*, the other sons, as well as the minor branches of the family, being only entitled to maintenance. *Maharajah Gournarain Deo, v. Unund Lall Singh*. 24th Feb. 1840. 6 Sel. Rep. p. 141 note.

89. In the case of an estate in *Maunbhoom*, held according to the usage of the family, that the succession vested in the eldest son of the deceased Rajah, born of any of his wives, in preference to the eldest son of his pāt Rance. *Rajah Rughoonath Singh, v. Rajah Hureekur Singh*. 8th June 1843. 7 Sel. Rep. p. 126.

90. Family usage for fourteen generations by which the succession to the *Raj Zemindari of Tirhoot* had uniformly descended entire to a single male heir, to the exclusion of the other members of the family upheld. *Gunesh Dutt Singh, v. Moharajah Moheshshur Singh*. 20th June 1855. 6 M. I. App. p. 164.

91. In a suit against the son of the late Rajah of *Tipperah Zemindaree*, there being proof that, by the usage of the family, the person appointed *Jobraj* is successor to the Zemindaree, in preference to the next kin, such usage was upheld by the Court. *Ramjunga Deo, v. Doorgamunee Jobraj*. 24th March 1809. 1 Sel. Rep. p. 361 ; *Urjan Manic Thakoor, v. Ramjunga Deo*. 24th March 1814. 2 Sel. Rep. p. 177.

92. The late Rajah of *Tipperah* had a full right according to the custom of the family to nominate whomsoever he chose to be *Jobraj* and that the person so appointed invariably succeeded to the *Raj*. *Beerchunder Jobraj, v. Nilkishore Thakoor*. 26th Sept. 1864. 1 W. R. p. 177.

93. Where a party sued to recover the *Raj* of one of the tributary *Mehals* of *Cuttack*, as the son and heir of the late possessor, his claim was dismissed on the ground that his mother being a kept mistress and never having resided in the *Mahal Sarai*, he was not entitled to succeed, according to the local and family usage. *Rajah Jenardun Ummur Singh, v. Ohboy Singh*. 2nd Sept. 1835. 6 Sel. Rep. p. 42 ; *Bulbhudur Bhourbhur, v. Rajah Juggernath*. 29th July 1840. Ibid. p. 296.

94. According to the *Pachees Sawol*, a brother of the *Rajah of Attghur*, one of the tributary *Mehal* of *Cuttack*, has a preferential title over the Rajah's son by a *Phoolhebahee* wife to

succeed to the *Raj*. *Nittanund Murdiraj*, v. *Sreekurun Jugger-nath*. 4th July 1865. 3 W. R. p. 116.

### XII.—To Woman's Property.

95. Property given by a Hindu to his daughter on the occasion of her marriage is *Stridhun*, and passes to her daughter at her death. *Prankishen Singh*, v. *Bhagobuti*. 25th April 1793. 1 Sel. Rep. p. 4.

96. An adopted son has all the rights and privileges of a son born, and is also entitled to succeed to the *Stridhun* of his mother in the absence of daughters. *Tincowree Chatterjee*, v. *Denonath Banerjee*. 25th May 1865. 3 W. R. p. 49.

97. An adopted son by one wife may succeed to a co-wife's *Stridhun*.—*Ibid*.

98. If the deceased left a brother, sister, sister's son, husband's brother's son, brother's son or son-in-law, any such person is entitled to succeed to the *Stridhun*. *Sreenarain Rai*, v. *Bhya Jha*. 27th July 1812. 2 1st. Rep. p. 29.

99. According to the law as current in Mithila, the son of the mother's brother is not the heir to the peculiar property of a woman.—*Ibid*.

### XIII.—The Offices.

100. Land endowed for religious purposes is not hereditary: the management devolves on the heirs of the person who made the endowment. *Elder Widow of Rajah Chutter Sein*, v. *Younger Widow of Same*. 15th April 1807. 1 Sel. Rep. p. 180.

### XIV.—Exclusion from Inheritance.

101. A son adopted into another family is excluded from inheriting from the family of his natural father. *Sreenath Surma*, v. *Radhakant*. 24th Nov. 1796. 1 Sel. Rep. p. 16; *Duttanarain Singh*, v. *Ajeet Singh*. 15th Feb. 1799. *Ibid*, p. 26; *Ranee Bhowni Dabea*, v. *Ranee Soornjmoonee*. 12th May 1806, 1 *Ibid*, p. 179.

102. Dumbness, if from birth, is a cause of disinherison

in females as well as in males. *Vallabharam Shivnag, v. Bai Hariganga*. 4 Bom. H. C. Rep. a. c., p. 135.

103. A widow's claim to the estate of her husband was disallowed on account of her blindness, but a maintenance for life was awarded. *Dace, v. Poorshuttum Gopal*. 1 Borr. p. 453.

104. *Held*, on appeal (by a Full Bench) that, by Hindu law, an estate once vested cannot be divested in favor of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person if, having been begotten, and being in the womb at the time of the ancestor's death he is afterwards born capable of inheriting. *Kalidass Dass, v. Kishanchunder Dass*. 2 B. L. R. f. b., p. 103.

105. The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiocy is not necessarily utter mental darkness. *Tirumamagal Annal, v. Ramasvami Ayyangar*. 1 Stockes, p. 214.

106. A person of unsound mind, who has been so from birth, is in point of law an idiot.—*Ibid*.

107. The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life.—*Ibid*.

108. An illegitimate son of a *Khatri*, one of the three regenerate castes by a *Soodra* woman cannot, by Hindu law of inheritance, succeed to the inheritance of his putative father; but he is entitled to maintenance out of his deceased father's estate. *Chuoturya Runmurdu Syn, v. Sahub Purhlad Syn*. 7 M. I. App. p. 18.

109. A Hindu having adopted a son cannot disinherit such son by will. *Gopee Mohun Deb, v. Rajah Rajkshen*. Maen. Cons. H. L., p. 230.

110. *Semble*. An adopting father cannot disinherit a son properly adopted, even for bad behaviour. *Dace, v. Motee Nuthoo*. 6th Oct. 1813. 1 Borr., p. 75.

XV.—*To Property of Absentee.*

*See 'Inheritance,' No. 36.*



## MAINTENANCE.

1. A Hindu died possessed of no property, but leaving a widow, on his death she left the house of her father-in-law and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. Held, that she could not sue her father-in-law for a sum of money on account of her maintenance. *Kheter Money Dasse, v. Kaseenath Dass*, 2 B. L. R. f. b., p. 15.

2. The widow of a Hindu who died before his father is entitled to food and raiment only. *Bheelu, v. Phulchund*. 3 Sel. Rep. p. 298; *Shambullub, v. Prankishna*. 3 Sel. Rep. p. 44; *Hemleta*. 4 Sel. Rep. p. 25. *Ujjalmuni, v. Joygopal*. S. D. Cal. 1848, p. 491; *Huro Soondery Gupta, v. Anund Gobind Sen*. 1850, p. 422; *Ramdhone Bhuttacharjee*. S. D. Cal. 1852, p. 796; *Shamasoondery Dabea*, S. D. Cal. 1858; p. 1220; *Khudemoni Dabea*, 2 W. R. p. 134, *Shama Soondery Dabea*. 6 W. R. p. 37; 2 Macnaghten's H. L., Cases 2, 4, 8, 9, and 11; and *Kahmalmoni Dass, v. Bholender Narain Mozoomdar*. 2 Macn. H. L. p. 118.

3. The support of a widow by her parents is optional. Should they refuse, her husband's heirs are bound to maintain her even though she had not arrived at maturity at the time of her husband's death. *Mad. S. D.* 1858, p. 154.

4. The mother or grandmother is entitled to a share when sons or grandsons divide the family estate between themselves; but she cannot be recognized until the division is actually made; she has no pre-existing right in the estate except that of maintenance. *Shiv Dyal Tewary, v. Jodoo Nath Tewary*, 9 W. R. p. 62; *Pran Koowar, v. Keder Singh*. 1865. Dec. N. W. P. Rep. p. 31.

5. An illegitimate son of a *Rajput* or any of the three superior tribes, by a woman of the *Sudra* or other inferior class, is entitled to maintenance only. *Pershad Singh, v. Ranee Moheesree*. 17th Dec. 1821. 3 Sel. Rep. p. 176.

6. Under the Hindu law, a wife who, without her husband's sanction, leaves him to live with her own family, has no right to ask maintenance from her husband. *Kullea-nessary Dabea, v. Dwarkanath Surma*, 27th July 1866. 6 W. R. p. 115.

7. A brother's widow is only entitled to a separate maintenance out of ancestral property. *Bramacarapu, v. Venkamma*. Mad. S. D., 1869, p. 272.

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## MARRIAGE.

1. The injunction of Menu that "a man learned in the Veda" can only marry in the Bramha form, is only recommendatory, and not imperative. A *Sudra* is, therefore, competent to marry in that form, and sue his wife's parents for the value of property left by his deceased wife. *Shiva Rama Casia Pillay, v. Bagavan Pillay*. Mad. S. D. p. 44.

2. The union of a Rajput with a Jāts who is *Sudra*, in marriage is invalid. Even among the Jāts, as a general rule, the marriage of the widow of a younger brother by an elder is prohibited. *Gondhee and others, v. Hanuman Singh*. 12th May 1866. N. W. P. Rep. p. 175.

3. The Hindu law makes no distinction between legitimate children born of mothers of the same caste. *Rajah Nugender Narain, v. Rughoonauth Narain Dey*. S. H. Rep. p. 20.

4. A marriage contract to be valid must be made with consent of parents on both sides. *Anund Laul Bhugwandass, v. Tapeedas Prubhoodas*. 1 Borr., p. 16.

5. Contract made by a brother with his mother's consent for the marriage of his sister, held valid and binding. *Ruliyat, v. Madhowjee Panachand*. 2 Borr., p. 739.

6. According to the Hindu law, a marriage once solemnized by the ceremonies of Wagdan and Luptapuddee can never be set aside, although the marriage may have been irregular-

ly contracted by the mother, without the consent of the father. *Race Rulyat, Dhurrumchund Nuthoo, and Nuthoo Manickchund, v. Joychund Kewell.* 18th Aug. 1843. Bom. S. D., p. 43.

7. Loss of reason or lunacy does not incapacitate from marriage. *Dabychurn Mitter, v. Radachurn Mitter.* Montrieu, C. II. L. p. 538.

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## PARTITION.

*I.—Generally.*

*II.—Shares of Partition.*

*III.—Evidence of Partition.*

*IV.—Impartible Property.*

### *I.—Generally.*

1. A partition in fact is as binding as a partition by agreement. *Fulton's Rep.*, p. 132.

2. Under the Hindu law, two things at least are necessary to constitute partition. The shares must be defined, and there must be distinct and independent enjoyment. *Shib Dyal Tewary, v. Judoonath Tewary.* 9 W. R. p. 61 ; 5 Wym. Rep. p. 55.

3. The general rule of Hindu law of inheritance is partibility ; the succession of one heir, as in the case of raj, is the exception. *E. I. Company, v. Kamachee Boye Saheba.* 4 W. R. p. c., p. 42.

4. A private partition, in the absence of any regular butwarah by the Collectors, constitutes a legal separation for all purposes under the Hindu law. *Kishenkoomar Sahee, v. Kunchun Koonwur,* 5th Sept. 1839. 6 Sel. Rep. p. 273.

5. A declaration of intention to become divided in estate, though no actual partition has been made, is a valid separation. *Fato Koer, v. Rowshun Singh.* 21st June 1867. 8 W. R. p. 82 ; *Kulpnath Doss, v. Mewah Lall.* 7th Aug. 1867. *Ibid*, p. 302.

6. Ordinary gains of science are divisible when such

science has been imparted at the family expense, and acquired while receiving a family maintenance. *Chala Konda Alasani, v. Chala Konda Ralnachalam*. 2 Mad. H. C. Rep. p. 56.

7. Under the *Mitácshará* law, there may be a partition of an estate without a regular separation and actual division of lands. 27th May 1867. 7 W. R. p. 488. *Josodu Koonwar, v. Gowrie Byjonath Sehue Singh*. 6 W. R. p. 139; 2 Wym. Rep. p. 32.

8. According to Hindu law, the declaration of an intention to become divided in estate amounts to valid separation, though not immediately perfected by an actual partition of the estate by mêtes and bounds. 8 W. R. p. 83.

9. Partition of a dwelling house may be claimed as right by a Hindu. *Hullothur Mookerjee, v. Ramnath Mookerjee*. 1 Marshall Rep. p. 35.

#### II.—Shares of Partition.

10. Under the *Mitácshará* law, there may be a partition without any actual division of the lands into parcels, and allotment of those parcels to the different shares to be held by them in severalty. *Josodu Koonwar, v. Gowrie Byjonath*. 14th Augt. 1866. 6 W. R. p. 139; *Lalla Sreepersad, v. Akoonjoo Koonwar*. 22nd May 1867. 7 W. R. p. 488.

11. Although there has been no actual partition by metes and bounds, a co-parcener holding an ascertained share in immoveable property is competent to alienate it without the consent of the other co-parceners. *Hurdwar Singh, v. Luchmun Singh*. 4th Jan. 1868. 4 H. C. Rep. N. W. P. p. 41.

12. Though a Hindu family be in union, all the members do not share a portion that may lapse. *Madho Singh, v. Bindessery*. 25th Feb. 1868. 4 H. C. Rep. N. W. P., p. 101.

13. Ordinary co-partnership property is not subject to the rule of Hindu law, which excludes a widow from the succession at her husband's death to a share of joint property of an undivided family. *Rampersad Tewary, v. Sheochurn Doss*. 8th Feb. 1866. 10 M. I. App. p. 490.

14. Where the members of an undivided Hindu family have divided a portion of the estate, and held their respective shares separately, such shares will be liable to the incidents attaching to separate estates, although the whole of the joint property has not been divided. *Hoolas Koonwar, v. Man Singh*. 21st Jan. 1868. 4 H. C. Rep. N. W. P. p. 27.

15. According to the *Mitácshará* law, a son acquires by birth a right to ancestral property and has a right during his father's life-time to compel a partition of such property. *Sudanund Mohapattur, v. Soorjo Monee Dabea*. 25th Nov. 1867. 8 W. R. p. 455; *Kantoo Lall, v. Geeree Dharee Lall*. 16th April 1868. 9 W. R. p. 469; *Beerkishore Suhye, v. Hur Bullub Narain Singh*. 29th May 1867. 7 W. R. p. 502; *Rajaram Tewary, v. Inchemun Pershad*. 8 W. R. p. 16.

16. In ancestral property the right of son and grandson is equal. The grandson can put in his claim for his half share in the event of his father wishing to alienate it. The grandson can claim a portion at his pleasure *Durgasunker Kasseeram, v. Brijbullubh Moteechund*. Sel. Rep. S. D. Bom. p. 44; *Nagalinga Mudali, v. Subbiramaniya Mudali*. 24th Nov. 1862. 1 Mad. H. C. Rep. p. 77.

17. Before partition a Hindu father has no definite share in joint ancestral property which he can alienate. *Nowlatram, v. Durbaree Singh*. 12th Feb. 1867. 2 H. C. Rep. N. W. P. p. 115.

### III.—Evidence of Partition.

18. The mere circumstance of messing conjointly is in law no conclusive proof of co-parcenary in property. *Khooderam Serma, v. Trilochun*. 4th Sept. 1801. 1 Sel. Rep. p. 46.

19. Verbal evidence of partition is as conclusive as though it had been written. *Gocool Chunder Mitter, v. Tarachurn Mitter*. 1 Fulton's Rep. p. 132.

20. Deeds of sale and mortgage and mutations of names in the Collector's Register as amongst the members of a joint

Hindu family are evidence of separation. *Peary Lall, v. Bhovut Kooer Singh*. 6th Aug. 1862. Sevestre's H. C. Rep.

21. A deed duly executed by the members of a joint family is *prima facie* evidence of a valid separation, no actual division being necessary. *Kulpanath Dass, v. Mewah Lall*. 7th Aug. 1867. 8. W. R. p. 301.

*IV.—Impartible Property.*

22. Where A, a Hindu, claimed of B a right of participation in certain property acquired by trade whilst A and B were in family partnership with their late father, judgment was given against A, the property being proved to have been acquired by B, exclusively and without aid from any joint stock of the undivided family. *Soobuns Lall, v. Hurbuns Lall*. 17th June 1805. 1 Sel. Rep. p. 121.

23. Where one of four Hindu brothers, while living in family partnership with the rest, obtained a considerable grant of land; it was held that he was exclusively entitled to it by Hindu law, it not being shewn that he obtained it by means of aid from any joint funds of the family. *Puratab Bahadur Singh, v. Tilukdharee Singh*. 9th March 1807. 1 Sel. Rep. p. 236.

24. If a Hindu receive property from his father, a portion of the same devolves to his brothers; but if he acquire it by his own industry, without receiving assistance from the estate of his father, such property is not divisible on plea of inheritance, and no brother can claim any portion of it from him who is the maker of it. So that, should he leave a widow and no sons, grandsons, or great-grandsons, the property would devolve upon her as his heiress. *Govind Dass, v. Maha Lukshumee*. 25th Aug. 1819. 1 Borr. p. 241.

25. Held, in a case which arose in Ramghur, that the sole acquisition of one parcener, unaided by the common estate or labour, is impartible. *Koulath Singh, v. Jagrup Singh*. 20th Feb. 1830. 5 Sel. Rep. p. 12.

26. Held, that a purchase made by a Hindu, a member

of a joint undivided family, with his own funds, is his exclusive property. *Kishore Mune Dassee, v. Sreekanth Sen.* 4th Jan. 1842. 7 Sel. Rep. p. 67.

27. Under Hindu law places of worship and sacrifices are not divisible. *Anund Maye Chowdree, v. Boycuntath Rai.* 17th July 1867. 8 W. R. p. 193.

28. The fees received by *purohits* from *jujmans* are now partly voluntary gifts and partly payments for work and labour done; and neither of these is the subject of partition under Hindu law. *Jawahur Misser, v. Bhago Misser.* 13th March 1857. S. D. Cal. p. 362; *Hurogobind Serma, v. Bhowanipersaud Shaw.* 13th June 1850. S. D. Cal., p. 296; *Romakanth Serma, v. Gobind Chunder Serma.* 13th May 1852. S. D. Cal., p. 398.

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### REVERSIONER.

1. The above cases have decided beyond all controversy that alienations made by a life-tenant cannot be disturbed, except where waste is being committed, during the life-time of the alienor. *Chutter Dharee Singh, v. Hurcoomaree.* 2nd Augt. 1862. Hay's Rep. p. 107; *Ram Bunsee Koonwar, v. Moheshur Koonwar.* 17th Dec. 1865. 1 W. R. p. 338; *Kant Narain Singh, v. Prem Lall Paray.* 22nd June 1865, 3 Ibid, p. 102; *Oodoy Chund Jha, v. Dhun Monee Dabea.* 7th Augt. 1865. Ibid, p. 183; *Bogoa Jha, v. Lull Dass.* 21st June 1866. 6 Ibid, p. 36; *Haradhun Nag, v. Issur Chunder Bose.* 14th Sept. 1866. Ibid, p. 222; *Chummun Muktoon, v. Rajender Sakai,* 22nd Feb. 1867. 3 Wym. Rep. p. 106; *Narain Dass, v. Mukhun.* 15th March 1866. 1 P. Rep. p. 29.

2. The Madras cases lay down the same doctrine. *Bhagavatamma, v. Pampana Gaud.* 18th May 1865. 2 Mad. H. C. Rep. p. 393; *Kumavadhani, v. Joysa Narasingappa.* 25th June 1866. 3 Ibid, p. 116.

3. Where, however, a widow mortgaged immoveable property to one person, and afterwards gave it in absolute

gift to another, it was held by the Bombay High Court that the deed of gift did not convey to the donee the widow's equity of redemption. *Jaganatha Vitthal, v. Apaji Vishnu*. 12th Oct. 1868, 5 Bom. H. C. Rep. p. 217, a. c. 1 Ratt. Rep. p. 296.

4. A reversioner is only entitled to a decree declaratory that the widow's act of alienation is null and void as far as it affects the interests of the reversioner, and for provision, if necessary, to prevent waste by the appointment of a receiver, or manager. *Jwalanath, v. Kulloo*. 14th Jan. 1868. 4 H. C. Rep. N. W. P. p. 55.

5. If a reversioner can show that a wilful default of revenue is about to be made by the life-tenant in order to bring the estate to sale, he is entitled to ask such relief from the Courts as will prevent the apprehended occurrence. *Sarbochunder Sen, v. Muthooranath Puddoik*. 27th March 1867. 3 Wym. Rep. p. 206.

6. In a suit by a reversioner to set aside a sale by a Hindu widow, the Court cannot give possession to the reversioner but can only declare the sale to be invalid. *Goluckchunder Dass, v. Gopalkissen Sen*. 31st May 1864. S. H. C. Rep. p. 250.

7. A reversioner cannot sue to dispossess a widow or a purchaser holding under her. *Haradhun Nag, v. Issur Chunder Bose*. 11th Sept. 1866. 6 W. R. p. 222 ; *Hurish Chunder Sen, v. Bromomoye Dassee*. 6th March 1866. 5 W. R. p. 131.

8. A distant reversioner is not at liberty to sue to interfere with the acts of a Hindu widow in possession of an estate. The immediate reversioner alone is entitled to sue. *Ram Lall, v. Bunsedhur*. 12th March 1866. 4 N. W. P. Rep. p. 238.

9. The property of a deceased person in the possession of his widow reverts at her death to the reversioners in existence at that time. *Balgobind Lall, v. Ram Pertab Singh*. 25th June 1860. S. D. Cal. p. 661.



## “STRIDHANA.”

1. Property given by a Hindu to his daughter on the occasion of her marriage, is *Stridhana*, and passes to her daughter at her death. *Prankishen Singh, v. Bhogwatee*. 25th April 1793. 1 Sel. Rep. p. 3.

2. A legacy to a married woman, if given by her relations or by the relations of her husband, is, according to Hindu law, *Stridhana*, and the husband has no interest in it; but if given to her by a stranger she cannot part with it without her husband's consent. *Ramdoolal Sircar, v. Joymoney Dabee*. 1816. East's Notes, Case 45.

3. Property given by a Hindu to his sister and paternal uncle's daughter was held to be at their entire disposal as their *Sandayica Stridhana* or peculiar property, by gift from affectionate kindred. *Gossain Chand Kobraj, v. Kishenmonee*. 8th July 1836. 6 Sel. Rep. p. 77.

4. Semble. Property given by a Hindu who has married two wives, to his first wife, by a written instrument attested by witnesses in order to satisfy her in respect of his second marriage, is her property as *Stridhana*, and she may sue her husband for it as for debt. *G. v. K.* East's Notes, Case 129.

5. A woman can dispose of *Stridhana* at pleasure by gift, will or sale (except immoveable property given to her by her husband.) *Tincowri Chatterjee, v. Denonath Banerjee*. 25th May 1865. 3 W. R. p. 49.

6. According to the *Mitácshará* and the *Viváda Chintamunee*, all property that a woman inherits does not thereby become *Stridhana*, so as, after her death, to descend to her heirs. *Punchanund Ojha, v. Lalshan Misser*. 3 W. R. 17th July 1865, p. 140.

7. When *Stridhana* has once devolved as such upon an heir, it does not continue to devolve as *Stridhana*, but afterwards devolves according to the ordinary rules of Hindu law. *Srinath Gangopadhya, v. Sarbamangala Dabee*. 22d Dec. 1868. 2 B. L. R. a. c., p. 144.

8. Property derived by a widow from her father was decided to pass to her own sister after her death, and not to the sister of her late husband, and nieces; daughters of the sister of the widow, were held to be entitled to the property as her nearest relations and legal heirs, being descended in a direct line from her father, in preference to the grandson of the deceased husband's sister. *Juggunnath, v. Sheoshunker*. 14th Feb. 1814. 1 Borr. p. 91.

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UNDIVIDED HINDU FAMILY.

1. In a joint Hindu family, the divided members inherit on failure of undivided ones. *Chokalinga Seircagaren, v. Jyah Moodelly*. Mad. S. D. 1859, p. 35.

2. Though a Hindu family be united all the members do not share in a portion that may lapse. *Madoo Singh, v. Bindessery Roy*. 4 H. C. Rep. N. W. P. p. 101.

3. According to the true constitution of an undivided Hindu family, no individual member of the family, whilst it remains undivided, can predicate of the joint and undivided property, that he has a certain definite share. *Appovier alias Sectaramier, v. Rama Subba Aiyar*. 11 M. I. App. p. 75.

4. Held, that by Hindu law, a house purchased in the name of one of two brothers living undivided, is the property of both. *Sidapa Bin Revapa, v. Poonea Kooto*. 21st March 1851, S. D. Bom. p. 100.

5. A Hindu family may be undivided as to mess, but divided as to property. The finding of the Lower Appellate Court that the parties to the suit formed "an undivided family" was held to be a sufficient finding that they were not divided as to property. *Bhooput Roy, v. Motty Roy*. Sevestre's H. C. Rep. p. 4a.

6. The rule of Hindu law in cases of joint family property (i. e., that it must be presumed to be joint until proved to be the contrary) is applicable to a case where the property has passed by sale into the hands of third parties, and has

been redeemed by private purchase by one of the former shareholders *Gooropersaud Roy, v. Dabepersaud Tewary*. 6 W. R. p. 58.

7. The mere fact of certain property standing in the name of one member of a joint family is no index to the real owner, nor is separate possession any evidence of separate acquisition. *Lalla Beharee Lall, v. Lalla Madho Persaud*. 6 W. R. p. 69.

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### WIDOW.

1. *Held*, that a widow cannot, under Hindu law, dispose of immoveable property given to her by her husband, which has become a portion of her *Stridhana*, the absolute dominion of a woman over her peculiar property not extending to land. *Baboo Gunput Singh, v. Gunga Persaud*. 2 H. C. Rep. N. W. P. p. 232.

2. *Held*, that a childless Hindu widow who had succeeded her husband in the possession of a separate estate, is perfectly competent to assign the profits thereof to the payment of a debt. *Koowar Sheo Mungul Singh, v. Gonesh Koonwar*. Dec. S. D. N. W. P. Rep. p. 108.

3. A widow does not inherit the property of her husband when held in co-parcenary. She is only entitled to maintenance. *Nund Koowar, v. Tootee Singh*. 4. Sel. Rep. Cal. p. 420. In note in *Gyan Koonwar*.

4. A childless widow takes a limited interest in her husband's estate. *Panchcowree Mahtoon, v. Kaleechurn*. 9 W. R. p. 490.

5. According to the Hindu law as current in Benares, a childless widow is not entitled to succeed to the estate of her husband, which devolved entire on him from his ancestors to the exclusion of his brothers. *Rajah Skumshere Mull, v. Rancee Dilraj Koonwur*. 31st Jan. 1816. 2 Sel. Rep. p. 216.

6. According to the Mithila Law, a childless widow does not succeed to her husband's share of a joint undivided estate,

if there be brothers of the husband living. *Baboo Runjut Singh, v. Baboo Obhye Narain Singh*. 26th July 1817. 2 Sel. Rep. p. 315.

7. A widow succeeding to the estate of her own son does not lose the right to exercise the power of adoption. By making an adoption, she divests herself of her own estate only. *Bycunt Monee Roy, v. Kristo Soondery Roy*. 7 W. R. p. 392; 3 Wym. Rep. p. 255. See *Bhoobunmoyee Dabee, v. Ramkishore Acharj Chowdree*. 10 M. I. App. p. 279.

8. A widow whose husband pre-deceased his father has no claim to a share of her father-in-law's estate along with the daughters of another son who survived his father. *Jeethee, v. Sheo Bacc*. 2 Borr. p. 640.

9. A widow cannot betrothe her daughter without consent of her husband's brother. *Kumla Buhoo, v. Munnee Sunkur Ichha Sunkur*. 2 Borr. p. 746.

10. A childless Hindu widow and nearest heir of her deceased husband has, under the *Mitácshará* law, an absolute right over all the moveable property left by him, and can alienate it to whomsoever she pleases. *Doorga Daye, v. Poorun Daye*. 5 W. R. p. 141.

11. On suit by reversionary heirs, a widow was deprived of the management of the property, as her acts were entirely subversive of the rights of the heirs. *Nundlall, v. Bolakee Beebee*. 24th July 1854. S. D. Cal. p. 351.

12. A Hindu widow has an absolute right to the fullest beneficial interest in her husband's property inherited by her for her life. She takes as heir a proprietary estate in the land, absolute for some purposes, although in some respects subject to special qualifications, and disposition of the property is good for her life.

13. The proposition that a widow has no estate in her husband's immoveable property, but only the personal enjoyment of the usufruct is untenable. *Kamavadhani Venkatea Subaiya, v. Joyce Narasingappa*. Mad. II. C. Rep. p. 116.

WILL.

1. Self-acquired property, moveable and immoveable, may be distributed by will unequally among younger sons, to the exclusion of the eldest son. *Rughoonath Paul's will*, Macn. Cons. H. L. p. 369.

2. A Hindu cannot under any circumstances will away the whole of his property whilst there are legal heirs in existence. *Toolgaram, v. Nurbheram*. 5th Oct. 1811. 1 Borr. p. 380.

3. By the Hindu law every person who has authority while in health to transfer property to another by gift, possesses the same authority to bequeath it. *Sreenarain Rai, v. Bhyajha*. 27th July 1812. 2 Sel. Rep. p. 29.

4. Where there are three persons equally related to each other within the seventh degree, and equally entitled each to a share of the property of a certain person by the Hindu law that person cannot by will bequeath the whole of it to one alone, to the prejudice of the other two, unless they should have resigned their rights to the testator's estate, and such resignation should be expressed in the will. *Hurree Bullub Gungaram, v. Keshawram Sheodas*. 26th Feb. 1822. 2 Borr. p. 6; *Ichharam Shumboo Dass, v. Preemanund Bhacechund*. 4th March 1823. 2 Borr. p. 171.

5. By the Hindu law, current in Madras Presidency, a *Zemindar* having no issue, has the power of alienating, by deed or will, a portion of his estate, which, in default of lineal male issue and intestacy, would rest in his widow, without her consent. *Mulraz Iuckmia, v. Chalekancy Venkata Rama*. 30th June 1838. 2 M. I. App. p. 54.

6. By the Hindu law administered in the N. W. Provinces, a Hindu has power to make a testamentary disposition in the nature of a will.

7. A disputed will made by a Hindu, disposing of self-acquired estate among his family, established. *Nana Narain Rao, v. Huree Punth*. 25th June 1862. 9 M. I. App. p. 96.

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